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ADMIRALTY:

1 The admiralty jurisdiction depends on the nature of the contract, and is limited to claims and services purely maritime, and touching rights and duties appertaining to commerce and navigation.
Arrill v. *The Alabama Belle et al*, 432

2 A contract to furnish a steamboat with timber and other materials for the repair of the boat, is not a maritime contract. *Ib.*

AGENCY:

1 Plaintiffs shipped a cargo of lumber to his agent at New Orleans, with instructions to sell the same, and deposit the proceeds with DeGoicouria & Co. The agent sold the lumber and deposited the proceeds with DeGoicouria & Co., and took their receipt for the amount. Plaintiff, the owner of the lumber, brings suit against DeGoicouria & Co., for the amount of the proceeds of the sale, which they resist, on the ground that the agent is indebted to them, and they have passed the same to his credit: *Held*—That the owner must recover from the depositary the amount of the sale, with interest. *Taylor* v. *DeGoicouria & Co.* 30

2 The principal is not liable for the debts of his agent, contracted before the agency commenced. *Ib.*

3 Where an agent deposits money belonging to his principal, in his own name, the principal can recover the same from the depositary, on showing that it belonged to him at the time of the deposit. *Ib.*

4 The question of the liability of principal or agent to third parties must be determined by the circumstances of the transaction and the conduct of the parties. *Stehn* v. *Fasnacht Brothers*, 81

5 Where a party, dealing with an agent, with a knowledge of the principal, gives the credit to the agent, he is bound by his choice. Story on Agency, No. 291. *Ib.*

6 The principle of law is well settled, that where an agent disobeys the instructions of his principal, and loss occurs by his disobedience, the agent becomes personally liable for the damages.
Szymanski v. *Plossan*, 90

7 The principle of law is equally well settled, that whenever the agent has committed a breach of instructions, and the principal with a full knowledge of all the consequences adopts his acts, he is bound by them, and the agent is discharged: and the principal's acts will be liberally construed in favor of a ratification of the acts of the agent. *Ib.*

8 Where an agent or mandatary has acted within the scope of his legitimate authority, he cannot be held personally responsible for a contract made by him with a third person in that capacity.
Delaroderie & Son v. *Hart and Pike*, 126

AGENCY, *Continued.*

9 Defendants were the lessees of the Louisiana Penitentiary, from 1857 to 1862, under the law of 1858. After the expiration of their lease they continued for a time to administer the affairs of the institution as agents. In the fall of 1862, they contracted with plaintiffs, in that capacity, for a lot of lumber, which was used in removing the machinery and property thereof from Baton Rouge to Clinton, Louisiana, for supposed safety. The bill for the price of the lumber is made out against them as agents. Plaintiffs now seek to hold them personally liable on the contract: *Held*—That under this state of facts, they cannot be held personally liable; that plaintiffs, having admitted their agency and dealt with them in that capacity, cannot recover from them individually. *Ib.*

10 In 1862 plaintiff removed temporarily to the State of Texas, a place of refuge during the war, leaving his plantation and affairs in charge of his son-in-law, N. A. Bacon, with full power to manage the same as he, the agent, would his own affairs. The agent sold some of the cotton and some lumber, and notified the owner thereof by letter. Plaintiff returned from Texas after the war had ended, but made no objection to the action of his agent in the sale of the cotton until the institution of this suit for the recovery of the value: *Held*:—That his knowledge of the action of his agent in selling the property, and failing to make any objection thereto, amounted to a ratification thereof binding on the principal. *Mangum* v. *Bell*, 215

11 A mandate is gratuitous, unless a contrary stipulation has been made; and no compensation is allowed unless it appear from the terms of the mandate that a charge was to be made. *Moreau* v. *Dumagene*, 230

12 Where the principal, having his agent in his employ at a fixed rate, imposes upon him additional duties, and enlarges his powers, without stipulating that he is to receive additional compensation, the agent or mandatary cannot recover any extra wages for the additional services. *Ib.*

13 Where the agent acts within the scope of his legitimate authority, the principal is bound by his acts. *Wallace & Co.* v. *Lamson et al.* 243

14 The Harmony Insurance Company of the city of New York, sent their agent, J. W. Lamson, to New Orleans, to cause the sunken steamer Charlotte to be raised. Lamson purchased the steamer Champion for the company, and used her in his efforts to raise the sunken steamer. For the price of the steamer Champion, and other expenses, which he incurred, he drew his drafts on the company in New York: *Held*—That these expenses, being necessary to accomplish the main object of the agency, viz: the raising of the sunken steamer Charlotte, the company was bound to pay them. *Ib.*

15 The fact that a party was the agent of another at a particular date, is no evidence that he was his agent at a prior date.
Chappel et al. v. *Raymond & Co.* 277

16 A contract of agency whereby the agent was placed in possesion of Confederate treasury notes and bonds of the Confederacy (so-called)

AGENCY, *Continued.*

to invest in the purchase of cotton for the benefit of the principal is illegal, and connot be enforced. *Wells* v. *Addison*, 295

17 An agent is bound to establish his authority under the general issue. *Lemata* v. *Mucera*, 426

18 The functions of an attorney in fact come to an end by the death of his principal. *Bird* v. *Doyal*, 541

APPEAL:

1 Where the certificate of the clerk of the District Court does not show that the transcript contains a complete record of the case as it was tried in the lower court, and there is no assignment of errors, bill of exceptions, or statement of facts, the appeal will be dismissed. *Roumage* v. *Durrive & Co.*, 21

2 Where the appellee has failed to file an answer in the appellate court, asking an amendment of the judgment appealed from, it will not be noticed on suggestion in the brief. *Davis* v. *Lusitanian Portuguese Benevolent Association*, 24

3 All parties interested in maintaining the judgment of the lower court must be made parties to the appeal, otherwise the appeal will be dismissed. 18 A. 281. *Succession of James Forsyth*, 33

4 Where an appeal has been granted in chambers, citation of appeal must be addressed to and served on the appellee, in the capacity in which he appears on the record in the lower court. *Camutz* v. *Bank of Louisiana*, 35

5 Citation of appeal, in a personal capacity, where the record shows that he occupies a representative capacity only, is defective, and the appeal will be dismissed. *Ib.*

6 Where the evidence shows that there is no foundation for the appeal, damages will be awarded as for frivolous appeal. *Bank of Kentucky* v. *Goodale*, 50

7 In an injunction suit, where judgment for damages is rendered against the plaintiff and his surety, and the plaintiff alone appeals, the appeal will be dismissed, unless the surety is made a party thereto. *Pecoul* v. *Perret*, 70

8 Article 577 of the Code of Practice, only refers to judgments decreeing the delivery of real estate. It has no application where the judgment only recognizes the mere *status* of the plaintiff as having an interest, or ownership in the property in dispute. C. C. 453. *State, ex rel., Hickey.* v. *Judge of the Fourth District Court*, 108

9 Where there is no standard specially fixed by law as to the amount of the appeal bond required to operate a *supersedeas*, pending the appeal, the Judge *a quo* should allow a suspensive appeal, on appellant's giving bond in an amount sufficient to cover costs. *Ib.*

10 The judgment of the lower court is final against all the parties to the suit, not made parties to the appeal. *Noble & Kaiser* v. *Steamer R. W. Powell et al.*, 121

11 The Supreme Court is only seized of jurisdiction to amend the judgment of the lower court between appellant and appellee, and not between appellees. *Ib.*

12 Where the answer of defendant admits a certain amount to be due, and judgment is rendered thereon, an appeal from such judgment

APPEAL, *Continued.*

will be dismissed on motion. No appeal lies from a confession of judgment. C. P. 567. *Stewart* v. *Betzer*, 137

13 Where the record contains no certificate of the clerk or Judge, and there is no special verdict, bill of exceptions, statement of facts, nor assignment of errors in the transcript, the appeal will be dismissed on motion. *Patterson & Co.* v. *Owen et al.*, 141

14 Where no error in the judgment of the District Court is pointed out, and none appears from the record, the Supreme Court will dismiss the appeal, and award damages to appellee. *Drez* v. *Logan*, 157

15 The Supreme Court can only settle the rights of parties as between the appellants and appellees, and not between the appellees *inter sese.* *Moore* v. *Moore*, 159

16 Where the certificate of the clerk of the District Court shows that the record of appeal is not such as the law requires, and the appellant has not filed an assignment of errors within ten days after the filing of the record, the appeal will be dismissed. *Lanfear* v. *Duraind et al.*, 161

17 The amount of the bond, for a suspensive appeal from an order of seizure and sale, must be one-half over and above the amount actually due at the date of the order. *Tournillon* v. *Ratliff*, 179

18 The consent of the appellee to the dismissal of the appeal, will release the security on the appeal bond. *Ib.*

19 The Supreme Court will not take cognizance of an appeal when there is no order of the District Court granting the appeal. It will *ex officio* take notice of the non-existence of such order, and dismiss the appeal. *Batchelor* v. *Creditors*, 193

20 Consent of parties that an appeal may be taken does not vest the Supreme Court with jurisdiction over the case, because agreement between the parties is not an order of court. *Ib.*

21 All parties having an interest that the judgment of the District Court be maintained, must be made parties to the appeal, otherwise the appeal will be dismissed on motion. *Ib.*

22 A judgment appealed from cannot be amended between appellees. *LeBlanc* v. *LeBlanc*, 206

23 Where the transcript of the record is duly certified to by the clerk of the District Court, it is sufficient to enable the Supreme Court to decide the case on its merits, and the appeal will not be dismissed. *Cammack* v. *Gordon et al.*, 213

24 Where the record discloses the fact that the appeal was taken for delay, damages will be allowed as for frivolous appeal. *Spencer* v. *Bloomfield & Steel*, 225

25 Where the appellant allows three judicial days to elapse after the return-day, before filing the transcript in the Supreme Court, the appeal will be dismissed on motion of the appellee. *Moriere* v. *Robinson & Jones et al.*, 229

26 Where the certificate of the clerk of the District Court shows that the record of appeal contains everything essential to a full examination of the case in the appellate court, the appeal will not be dismissed. *Wells* v. *Turnage*. 234

27 Where the District Judge renders judgment in favor of defendant for

APPEAL, *Continued.*

a fixed amount, with costs, and the Supreme Court reverses that judgment, and gives judgment for a smaller amount, the defendant and appellee must pay the costs of appeal. *Ib.*

28 Where a party obtains an order of appeal in open court, and fails to file his bond and take up his appeal within the time fixed in the order, but takes it up afterwards, he will not be considered as having abandoned his appeal, nor will he be precluded from obtaining a second order under which he may prosecute the appeal.
Mortee v. *Edwards*, 236

29 A statement of facts made by the Judge *a quo*, must be filed in the record before the appeal is granted, otherwise the appeal will be dismissed. *Logan* v. *Winder*, 253

30 Where an appeal has been taken from a judgment of the lower court, and filed in the Supreme Court, thereby investing the appellate court with jurisdiction over the case, the appeal cannot be withdrawn without the consent of all parties to the record. The consent of the parties, plaintiff and defendant, will not bind the intervenors.
Perkins v. *Perkins*, 257

31 An appeal involving only the regularity of the proceedings of seizure and sale, does not affect any other remedy which the creditor has for the recovery of his debt. *Smith* v. *Purves et al.*, 278

32 The sheriff, who has been made the depositary of funds in his official capacity, about which a contest is going on in the court, is no party to the litigation, and need not be made a party to the appeal.
White v. *Bird*, 282

33 All parties interested in maintaining the judgment of the lower court, must be made parties to the appeal, otherwise the appeal will be dismissed. *Succession of Kennedy*, 292

34 A judgment of the lower court can only be amended in the appellate court in favor of appellants or appellees; it cannot be amended between appellees. *Boisse* v. *Hederick*, 307

35 Where no appeal bond has been given in favor of the parties called in warranty, the appeal will be dismissed. *Knox* v. *Duplantier*, 328

36 Where the amount fixed by the Judge for the appeal bond is less than that required by law for a suspensive appeal, it will be good as a devolutive appeal, the bond in the latter case being only to secure the payment of costs. *Succession of Armat*, 340

37 An appeal will not lie from an interlocutory order permitting a party to bond property under sequestration. *Block* v. *Barthe*, 344

38 The appeal bond must be given in favor of all the parties (appellee) to the judgment appealed from, otherwise the appeal will be dismissed on motion. *Rice Brothers & Co.* v. *Levy et al.*, 348

39 Where the appellant fails to appear in the appellate court, the judgment of the lower court will be affirmed.
Avendano v. *Ohmstede et al.*, 357

40 All the parties having an interest in maintaining the judgment of the lower court must be made parties to the appeal, otherwise the appeal will be dismissed. *Guy* v. *Marionneaux et al.*, 358

41 Damages will be allowed as for frivolous appeal, where the record discloses the fact that the appeal was taken solely for delay.
Mithoff v. *Weiss*, 376

APPEAL, *Continued.*

42 The right of inquiry into the sufficiency of the security, on an appeal bond after the bond is given, is within the province of the court from which the appeal is taken.
State, ex rel., Maury & Co., v. *Judge of Fourth District Court*, 390

43 An appellee cannot have the judgment of the court below amended in his favor without filing an answer to that effect in the appellate court. *Jamison et al.* v. *Barelli*, 452.

44 No amendment or reversal of the judgment of the court below will be rendered in the appellate court between appellees. *Ib.*

45 An appeal will not lie from a judgment of the District Court until it has been signed by the Judge.
Thiele & Seiler v. *Crutcher & Co.*, 499

46 Where the record does not contain all the facts necessary to enable the appellate court to determine the litigation, the case will be remanded. *Golding* v. *Petit*, 505

47 An appeal taken from a judgment, not signed by the District Judge, will be dismissed *ex proprio motu.* *Johnson* v. *Gennisson*, 511

48 Where a party claiming the office of sheriff brings suit by *mandamus*, against another holding the office, and on the trial the order is made peremptory and final by the District Court ordering him to give up the office to the claimant, a suspensive appeal will lie from the judgment, if the amount involved is sufficient to give the Supreme Court jurisdiction.
State, ex rel., Ingram, v. *Judge Sixth Judicial District Court*, 529

49 The right to a suspensive appeal is the rule, and it stays proceedings, except in cases specially excepted. C. P. 564, 565, 575, 580. *Ib.*

50 The law requires the same formalities to be observed in the execution of a bond for a devolutive appeal that it does for a suspensive appeal, though in a less amount. *Ib.*

51 In an ordinary suit for debt, where the amount in dispute does not exceed five hundred dollars, the appeal will be dismissed for want of jurisdiction. Con. of 1868, Art. 74. A State Constitution may be retroactive, and may divest vested rights. *Myers* v. *Mitchell*, 533

52 A case appealed to the Supreme Court under the Constitution of 1864, and transferred by act of the Legislature to the Supreme Court created by the Constitution of 1868, stands before the court in the same position with a case brought up on appeal since the adoption of the Constitution. *Ib.*

53 If the interest that has accrued on a promissory note, at the date of filing the suit in the District Court, when added to the principal demand, exceeds five hundred dollars, the Supreme Court will have jurisdiction of the appeal. *Schlenker* v. *Taliaferro*, 565

54 The presence, in a final judgment on a writ of *quo warranto*, of an interlocutory order of injunction will not defeat the defendant's right to appeal from this judgment, because the injunction has not been tried on its merits.
State, ex rel., Cain, v. *Judge Sixth District Court*, 574

55 In a controversy for office, where it appears that the salary of the office *per annum*, is more than the sum required to give the Supreme Court jurisdiction, a suspensive appeal will lie. *Ib.*

APPEAL, *Continued.*

56 The salary of an office *per annum*, may be shown by affidavit in the Supreme Court, after a motion is made to dismiss the appeal. *Ib.*

57 The affidavit may be made also before the District Court, before the order of appeal is granted. *Ib.*

58 The averment in the affidavit that the interest of the defendant in the suit exceeds one thousand dollars, is sufficient to give the Supreme Court jurisdiction, without mentioning the length of time he is entitled to hold the office. *Ib.*

59 The first clause in section 12, of the acts of the Legislature of 1868, No. 156, approved October 15th: "That appeals to the Supreme Court may be taken from any of the actions provided for in the foregoing sections, the same as in other cases," properly construed, means that when the appeal is taken within the legal delays it is suspensive, and afterwards only devolutive. *Ib.*

60 The right to a suspensive appeal is the rule, and it stays proceedings in the cause, except in cases specially excepted. C. P., 565, 575 and 580. The State, ex rel., Ingram, v. Judge of the Sixth Judicial District, (ante page 529.) *Ib.*

61 Where a party is entitled to a suspensive appeal from a final judgment, and yet has been condemned to pay no specific amount, the District Judge must fix the amount of the appeal bond. *Ib.*

62 An appeal from a judgment not signed by the District Judge is premature, and the Supreme Court will notice the fact of their own accord and dismiss the appeal. *Labatt* v. *Durruty*, 583

See Crim. Law and Criminal Proceedings, *State* v. *Behan*, 389

" Executors and Administrators—*State, ex rel., Champlin*, v. *Judge Second District Court*, 580

" Judgment—*Levi* v. *Converse, Harding & Co.*, 558

ARBITRATION:

1 An agreement to submit a controversy to arbitration, does not carry with it the idea of submitting it to a judicial tribunal for settlement. *Thompson & Co. et al.*, v. *Moulton*. 535

2 The words "arbitration and amicable lawsuit," used in an obligation or agreement between parties, are not convertible terms. The former carries with it the idea of settlement by disinterested third parties, and the latter by a friendly submission of the points in dispute to a judicial tribunal to be determined in accordance with the forms of law. *Ib.*

ARREST:

1 The act of the Legislature of 1855, authorizing the arrest of a non-resident debtor, who has absconded from his residence, is an exceptional statute, and must be construed strictly. *Levi & Navra* v. *Levy*. 552

ASSESSMENT:

1 A parish or municipal corporation, claiming a privilege on immovable property for taxes alleged to be due, must show that all the formalities of law have been strictly observed in making the assessment. Want of proper description of the property will vitiate the assessment roll. *Brusle* v. *Sauve*. 560

ATTACHMENT:

1 The attaching creditor has no previlege or preference over the property attached, until he has obtained judgment.

Plassan v. *Titus*. 345

2 In this case a number of the creditors proceeded by attachment against Auguste Titus, an absconding debtor; other creditors proceeded by sequestration, and procured the appointment of a syndic to take charge of the estate of the absconding debtor, and administer it for the benefit of all the creditors. The syndic filed a provisional tableau, giving the attaching creditors a preference over other creditors. The other creditors opposed the distribution: *Held*—That, inasmuch as the attaching creditors had not obtained judgments on their claims at the date of the sequestration, they had acquired no preference over other creditors on the property in the hands of the syndic, and the opposition filed by them to the tableau filed by the syndic must be sustained. *Ib.*

3 Where suit has been brought by attachment, and third parties, by answers to interrogatories in garnishment, show that they hold property belonging to the defendant, a third party cannot by intervention defeat the attachment, on the ground that the defendant had given him an order for the moneys or property attached before the same was made. *Harris* v. *Andrews & Co.* 561.

4 An attachment confers a lien in favor of the attaching creditor from the date of service of the writ. *Ib.*

5 Where the evidence shows that the defendant is an absentee, and it is not shown that there is any one in the State legally authorized to represent him, the attachment will be maintained.

Budd v. *Stinson*. 573

6 In a seizure, under a writ of *fieri facias*, of real estate, actual corporeal possession by the sheriff is not necessary. *Ib.*

ATTORNEYS & ATTORNEYS FEES:

1 Where an attorney-at-law appears in court and files an answer in a cause, he will be presumed to have been duly authorized by his client, the contrary not being supported by oath.

Succession of Patrick. 204

2 The receipt of an attorney-at-law, showing that he had received the amount of his client's debt in Confederate treasury notes, and credited the amount to the debtor of his client, is not binding on the client. An attorney is not authorized to receive anything but money in payment of the debt of his client. 19 A 172. *Davis* v. *Lee*, 248

See Garnishment—*White et al.* v. *Bird*, 188

" New Orleans—*State, ex rel. Bermudez*, v. *New Orleans*, 172

BAILMENT:

1 Defendant received a lot of cotton on deposit from plaintiff, for safe keeping, while the war was going on; and while the cotton was in his possession, bodies of armed men were in the neighborhood burning cotton: defendant removed the cotton from his gin to a more secure place, which was found and burned by the so-called Confederate authorities. Defendant received no compensation for keeping the cotton: *Held*—That the cotton was not at the risk of the depositary at the time it was burned, and it having been burned without

BAILMENT, *Continued.*

his fault and in opposition to his efforts to prevent it, he is not liable to the owner for the value thereof. *Levy et al.* v. *Bergeron*, 290

2 The putting in default of a depositary is a prerequisite to enable the depositor to recover where the thing deposited has been lost or destroyed. *James* v. *Greenwood*, 297

3 Where an agent or mandatary, or person having property on deposit at a time when he is not menaced by any overpowering force, allows the property to be taken from his possession without the consent or authority of the owner, he becomes responsible therefor, and the putting him in default is unnecessary. *Ib.*

4 A party in possession of household furniture belonging to another, may relieve himself from paying their estimated value by delivering the articles to the owner. *Draper* v. *Richards*, 306

5 Plaintiffs, commission merchants in New Orleans, bought cotton in Texas, in 1861, and stored it in a warehouse in Jefferson, Texas; during the late war, the agent of the owners made a sale of the cotton to the so-called Confederate authorities, who took actual, forcible possession of it; at the close of the war the United States authorities took charge of the warehouse and all the cotton therein as Confederate property. Plaintiffs now bring suit against the warehouseman for the cotton: *Held*—That the warehouseman having shown a sufficient legal excuse for not delivering the cotton, the burden of proof falls on plaintiffs, before they can recover, to show that the cotton was lost to them through his fault or neglect. *Babcock & Kernochan* v. *Murphy*, 399

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See Corporation—*Bank of Louisiana* v. *Green*, 214

BANKRUPTCY:

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BANKS & BANKING INSTITUTIONS:

1 All banking institutions in Louisiana, organized under the Free Banking Law of 1855, are exempt from paying interest on their notes in circulation. *Barker* v. *Union Bank of Louisiana*, 293

2 A banker and depositor occupy towards each other the relation of debtor and creditor, and the depositor of gold in the bank is only entitled to recover the amount in dollars and cents, in the circulating currency of the country. *Gumbel* v. *Abrams*, 568

BELLIGERENT:

See Contracts—*Hennen* v. *Gilman*, 241

BILLS AND PROMISSORY NOTES:

1 Payment in good faith to the possessor of a bill or note endorsed in blank, will discharge the drawer. C. C. 2141. *Davis* v. *Lusitanian Portuguese Benevolent Association*, 24

2 Where the holder of promissory notes endorsed in blank brings suit in her own name as owner, the burden of proof is on defendant to show that she is not the owner. *Ib.*

3 The endorsement in blank of the firm-name on a promissory note, made payable to their order, will authorize the drawer to pay the note to any *bona fide* holder. *Dorr* v. *Jouet*, 27

BILLS AND PROMISSORY NOTES, *Continued.*

4 One partner of a firm cannot maintain a separate action to recover a debt due to the partnership, but the moment the endorsement of the firm-name is put on negotiable paper, the partnership is divested of all title to it, which is vested at once in the endorsee and holder. *Ib.*

5 Notice of protest of a bill of exchange or promissory note, may be served on the drawer or endorser, by leaving it either at his residence or place of business, with a clerk or servant staying there, or it is sufficient if left on a desk, or put under the door.
Sullivan, Randolph & Budd v. *Godwin*, 33

6 Where payment of a promissory note has been extorted by military authority from the endorser, who endorsed the note merely as the agent of the owner for the purpose of collection, and the owner, on being informed of the fact, returns the amount to the agent, the drawer cannot set this up as a payment of the note, and plead his discharge from further liability. *Ib.*

7 Where the holder of a bill of exchange or draft presents it to the drawer, who refuses to pay it, he must give the drawer notice of the dishonor before he can bind him, unless he shows that the drawer had no funds or assets in the hands of the drawee at the time; and that he had no reason to expect that the draft would be honored or paid at the time it was drawn. *Blum* v. *Bidwell & Reddington*, 43

8 Where the holder of a draft seeks to recover on a subsequent promise, he must show that the promise was made by the party sought to be made liable, with a full knowledge of his discharge. A promise to pay after discharge must be absolute and unconditional. *Ib.*

9 An endorser of a promissory note is not bound to go to the mortgage office to examine into the consideration of the note, although marked *ne varietur*. 14 A. 177. *Bank of Kentucky* v. *Goodale*, 50

10 The presumption of law is, that the holder of a promissory note has acquired it in good faith, and the burden of proof is on the party disputing the ownership, to show that the holder did not acquire it in good faith. *Wheeler* v. *Maillot & Co.*, 75

11 Notice of dishonor of a promissory note, served in due time on a partnership, is sufficient to fix the responsibility both on the partnership and the individual members thereof. *Ib.*

12 To bind the endorser on a promissory note, notice of protest and dishonor must be given by the holder.
Letchford & Co. v. *Richard & Co.*, 133

13 Where the proof of notice of dishonor is vague and uncertain, the endorser will be discharged. *Ib.*

14 The Supreme Court of Louisiana takes judicial notice of orders issued by competent military authority.
New Orleans Canal and Banking Co. v. *Templeton*, 141

15 Where a promissory note negotiable in form, has been endorsed in blank, the law presumes that such endorsement was made on the day of its date. *Ib.*

16 The endorsement of a promissory note in blank is *prima facie* evidence of a full consideration. *Ib.*

BILLS AND PROMISSORY NOTES, *Continued.*

17 Where the defendant alleges that the endorsement was made after maturity, the burden of proof is on him to show the fact. *Ib.*

18 The policy of the law is favorable to the holder of negotiable commercial paper, and requires very cogent evidence to convict him of bad faith. *Ib.*

19 To bind the endorser on a promissory note, demand of payment must be made by the holder at maturity. *Labadiole* v. *Landry et al.*, 149

20 Where payment of a promissory note cannot be demanded at its maturity, a demand should be made as soon thereafter as practicable, and the burden of proof is on the holder to show that demand could not have been made at an earlier date. *Ib.*

21 It is not necessary that demand of an inland bill or promissory note be made, nor that notice of dishonor be given, by a notary public. Demand may be made and notice given by any competent witness. 19 A. p. 64. *Ib.*

22 A waiver of protest, by the endorser, written on the back of a promissory note, operates a waiver of demand on the maker. *Guyther* v. *Bourg*, 157

23 The waiver of protest and notice of dishonor by the endorser of a promissory note is not such an agreement as requires a United States internal revenue stamp placed thereon to admit it in evidence. *Ib.*

24 The loan by a citizen of the Confederacy, so-called, upon a promissory note of a sum in gold, to a firm within the *Confederate* lines, in Louisiana, engaged in getting supplies from territory within the *Federal* lines, at the instance of a Confederate officer, also a member of the firm, for and to be lent to another Confederate officer, to be sent, by the latter, to his family in Kentucky, is not illegal. *Cooper* v. *Thompson, Adams & Thayer*, 182

25 In order to bind the endorser of a promissory note, the holder must give him notice of protest. *Cammack* v. *Gordon et al.*, 213

26 Where the certificate of notice of protest of a promissory note does not show that the endorser was notified, and there is no other evidence fixing his liability, he will be discharged. *Crane* v. *Benit et al.*, 228

27 A promissory note endorsed in blank, held by the widow, is presumed to be held as community property, and is subject to all the equities existing between the original parties. *Lapice* v. *Bowman et al.*, 234

28 A promissory note, falling due on the happening of an event, is not a conditional obligation. *Mortee* v. *Edwards*, 236

29 The objection that a promissory note has not the requisite United States internal revenue stamp thereon, must be made at the time the note is offered in evidence in the lower court, otherwise it will not be noticed. *Ib.*

30 Where a purchaser of real estate and slaves, executed his notes, with mortgage on the property purchased to secure their payment, sells the same property to another party, and for a portion of the price stipulates in the act of sale that the third purchaser assumes the payment of the notes and mortgage given by him for the property, the third purchaser, not having signed the notes, is not bound by the law merchant; but is only bound on his assumpsit of the notes,

BILLS AND PROMISSORY NOTES, *Continued.*

and he may plead all the equities against the notes which the maker could. *Brou et al.* v. *Becnel et al.*, 254

31 The possession of negotiable commercial paper carries the title with it to the holder. *Doll* v. *Rizolli*, 269

32 The party who takes negotiable paper before due, for a valuable consideration, without knowledge of any defect of title, in good faith, holds it by a title good against the whole world. *Ib.*

33 The burden of proof lies on the person who assails the right claimed by the party in possession of a bill of exchange or promissory note negotiable in form. *Ib.*

34 A party in possession of a promissory note for collection, cannot, without express authority from the principal, extend the time of payment. *Chappel et al.* v. *Raymond & Co.*, 277

35 A executed his promissory note, payable to himself, endorsed in blank, which was afterwards acquired by B, for a valuable consideration before maturity. B transfers the note to C after maturity, with a knowledge of the consideration. C brings suit against A on the note, who resists the payment on the ground that the consideration was illegal: *Held*—That inasmuch as A could not urge the defence of illegality of the consideration against B, he could not against C, and he is therefore bound on the note. *Cotton* v. *Sterling et al.*, 282

36 Where a third party has acquired a promissory note in good faith for a valuable consideration before maturity, the maker is precluded from setting up as a defence the illegality of the consideration. *Knox* v. *White*, 326

37 The burden of proof is on the party who seeks to avoid the payment of a promissory note, on the ground that the consideration has failed. *Stephens* v. *Lanier et al.*, 347

38 Where a person, not a party to a bill or note, puts his name upon it, he is presumed to have done so as surety, and he is bound thereon as such. *Collins et al* v. *Trist et al.*, 348

39 Where a third party purchases a promissory note with full knowledge of the consideration, he cannot protect himself under the law merchant against the plea by the maker of failure of consideration. *Burbridge & Co* v. *Harrison*, 357

40 Where the consideration of a promissory note is shown to be the price of a slave, payment thereof cannot be judicially enforced. The doctrine in the case of Wainwright v. Bridges (19 A. p. 234) reaffirmed. *Ib.*

41 Proof of notice of dishonor is indispensable to hold the endorser on a bill of exchange or promissory note. *Abott* v. *Borge*, 372

42 Where a party has his domicil in one town or city and his office in another, notice of protest may be served on him at either. *Merz* v. *Kaiser et al.*, 377

43 The holder of a promissory note, endorsed by himself, is not bound to show a transfer of the note back to him. *Ib.*

44 Where the mail service between two points is suspended or broken up, a notice of protest deposited in the post-office by the notary at

BILLS AND PROMISSORY NOTES, *Continued.*

one place, addressed to an endorser who resides at another, the service is not good. *Lapeyre* v. *Robertson et al.*, 399

45 Where the mail service cannot be used as a means of conveying notice, the holder of commercial paper is not excused if he fails to use all other practicable means of bringing home notice to the party whom he wishes to charge. 19 A. 43. *Ib.*

46 The erasure of a word on the face of a promissory note, and the substitution of another word therefor, may be explained by evidence; and the notary, who drew the act of mortgage to secure the payment of the note, is a competent witness for the purpose.
Bernstien v. *Ricks*, 409

47 Where a promissory note is prescribed on its face, and the plea of prescription is filed for the first time in the Supreme Court, the case will be remanded to the lower court to enable the holder to introduce evidence, showing an interruption of prescription. *Ib.*

48 The burden of proof is on the holder of a bill of exchange to show demand, in order to bind the endorser. *Puig* v. *Carter*, 414

49 Where the holder fails to show due diligence, in making demand of payment of a bill of exchange, the endorser will be discharged. *Ib.*

50 Where there is no evidence in the record showing that the endorser of a promissory note has been notified of the protest, the judgment will be one of nonsuit. *Money* v. *Cosse*, 419

51 A party by writing his name across the face of a draft makes the acceptance complete, and parol evidence is not admissible to prove that at the time he wrote his name he refused to write the word "accepted" above his signature. *Kaufman & Co.* v. *Barringer*, 419

52 Where a party accepts a draft drawn to extinguish two other outstanding drafts, he cannot set up the failure of consideration for which the first drafts were given as a defence to the payment of his acceptance. *Ib.*

53 The words, "protest waived," written on the back of a promissory note, will not dispense the holder from making demand, and giving notice to the endorser. *Wilkins* v. *Gillis & Ferguson*, 538

54 The burden of proof is on the holder of a promissory note, under the general issue, to show the date of the waiver of protest. *Ib.*

55 Notice of protest served on the attorney in fact will not bind the endorser, unless the power of attorney expressly authorizes him to accept notice. *Bird* v. *Doyal*, 541

56 The holder of a promissory note is required to show the use of reasonable diligence to find out the residence of the endorser, when it is unknown to him. *Ib.*

57 Where an endorser of a promissory note has died, notice of the dishonor must be given to his legal representatives. *Ib.*

58 The payee of a promissory note, endorsed by him after maturity, is not a guarantor, and the holder, in order to bind him as endorser, must give notice of non-payment by the maker, the same as any other endorser. *Roquest et al.* v. *Pickell*, 546

BILLS AND PROMISSORY NOTES, *Continued.*

59 In order to bind the endorser on a promissory note, the holder must show due diligence in giving notice of dishonor by the drawer.
Cooley v. *Shannon et al.*, 548

SEE EVIDENCE—*Helm* v. *Ducayet et al.*, 217
" GARNISHMENT—*Denham* v. *Pogue*, 195

BONDS:

1 A security on an appeal bond, when sought to be made liable, cannot go behind the judgment, and set up matter in defence to the original suit that might have been pleaded or shown on the trial.
Murison & Co. v. *Butler et al.* 512

2 The liabilities and obligations of a surety on an appeal bond are fixed by special laws, and arise out of the bond. *Ib.*

3 If the judgment debtor be dead, the creditor may proceed against the surety on the appeal bond without previously issuing execution against the judgment debtor or causing any steps to be taken against his estate. *Ib.*

SEE APPEAL—*Succession of Armat*, 340
" " *Rice Brother & Co.* v. *Levy et al.* 348
" " *State, ex rel., Ingram*, v. *Judge, Sixth Judicial District Court*, 529
" JURISDICTION—*State* v. *Louisiana State Bank*, 468

BROKERS:

1 A party who engages the services of a broker, knowing him to be such at the time, to enable him to purchase exchange or other securities, and loss occurs on account of the worthlessness of the securities at the time of purchase, cannot hold the broker responsible for the loss in the transaction, unless an express stipulation was made to that effect. C. C. 2982. *Buddecke* v. *Harris*, 563

2 A broker is not answerable, except in case of fraud, for the insolvency of those to whom he procures a sale or a loan. C. C. 2988. *Ib.*

CARONDELET CANAL AND NAVIGATION COMPANY:

1 By the charter granted to the Carondelet Canal and Navigation Company, by the Legislature in 1858, the power to lease is unlimited and unrestricted, without distinction as to whether it be for a part or the whole of the property. *Per Curiam:* Where the law makes no distinction or discrimination, courts can make none; and to do so would be a purely arbitrary exercise of power.
Gubernator v. *New Orleans*, 106

SEE—*Ricau* v. *Baquie et al.*, 67

COMMON CARRIER:

1 A steamboat is responsible to the consignees for the damage caused to freight, by failing to deliver it at the time specified in the bill of lading. The amount of damages must be proved.
Mahan v. *Steamboat Olive Branch*, 257

2 The New Orleans, Jackson and Great Northern Railroad took on the cars at Osyka, Miss., 57 bales of cotton, for which they gave a bill of lading of the following tenor: Received in good order and well conditioned to be transported to New Orleans, but it does not insure against risk by *fire*. The cotton took fire on the train and was entirely consumed. The New Orleans Mutual Insurance Company pay

COMMON CARRIER, *Continued.*

the owners for the cotton $160 per bale, and sue the railroad company as common carrier, and base their right to recover on the ground that the fire and destruction of the cotton occurred through the fault and negligence of the railroad company and their employes: *Held*—That inasmuch as the railroad company specially excepted the risk of *fire*, and it not being shown by the insurance company that the fire occurred through the fault or negligence of the company, the insurance company cannot recover.

New Orlean Mut. Ins. Co. v. *N. O. and Jackson R. R. Co.*, 302

3 The common carrier is bound for ordinary negligence, notwithstanding the special agreement excluding risk for fire. *Ib.*

4 Steamships engaged in carrying passengers from one port to another are responsible for the loss or damage done to baggage while on board, which has been placed in the custody of the officer of the vessel, whose duty it is to receive and take care of baggage.

Moore v. *Steamer Evening Star*, 402

SEE TOWBOATS—*Clapp et al.* v. *Stanton & Co.*, 495

COMMUNITY:

1 The widow may renounce the community at anytime before the Court having unlimited jurisdiction over the subject-matter, has pronounced a final judgment against her as a partner in community. C. C. 2386. *Cockburn* v. *Wilson*, 39

2 Property purchased during the marriage, whether in the name of one or the other of the spouses becomes community property, unless there be a stipulation in the marriage contract to the contrary. C. C. 2369, 2371. *Cockburn* v. *Wilson*, 40

3 By the act of the Legislature of 1844, page 99, the survivor has the usufruct of the share of the deceased partner in community. The usufruct under the statute is governed by the rules relating to that subject in the Civil Code. *Moore* v. *Moore*, 159.

4 By Art. 538, C. C. "The natural fruits, or such as are the produce of industry, hanging by branches or by roots, at the time when the usufruct is open, belong to the usufructuary. *Ib.*

5 The failure of the husband to open the succession of his deceased wife, and inventory the property of the community, or give bond, does not annul or suspend the statutory usufruct, nor does it make him liable to account to the children of the marriage for the revenues due to him from the moment the usufruct accrued. He is in possession of right under the law, and can so continue, until a partition, or a second marriage. *Ib.*

6 From the date that the survivor in community contracts a second marriage, he is bound to account to the heirs (children,) of the former marriage for the rents and revenues arising from the use of the share of the deceased in the community. *Ib.*

7 Only the heirs having an interest in the community of their deceased mother, who are subject to the tutorship of their father by reason of their minority, have a legal mortgage on the property of their father, to secure the restitution of their interest of which the father has had the usufruct. *Ib.*

8 Where property has been bought during the marriage, in the name

COMMUNITY, *Continued.*

of the husband, with the separate funds of the wife, it become community property, and the wife has her recourse against the husband for the restitution of her funds so used, with mortgage on his property to secure the same. C. C. 2367. *LeBlanc* v. *LeBlanc*, 206

9 Where the estate of the wife has come into the possession of the husband during the marriage, and it is not shown that she administered it separately and alone, it will be presumed that it is under the administration and control of the husband. *Ib.*

10 The husband, being the head and master of the community, can alone be bound for the debts of the partnership. *Ib.*

Surls v. *Hienn*, 229

11 To recover against a married woman it must be alleged and proved that the debt was contracted for, and enured to, her separate and individual benefit.

See Taxes and Tax Sales—*New Orleans*, v. *Wire*, 500

CONFEDERATE TREASURY NOTES:

1 A contract, the consideration of which was Confederate treasury notes, cannot be judicially enforced in the Courts of this State.

O'Donnell v. *Burbridge*, 37

2 An exception will be sustained, and the suit dismissed, where the evidence shows that the consideration of the contract sued upon was Confederate treasury notes. *Ib.*

3 Confederate treasury notes having been issued in violation of law, cannot be considered as forming a part of the estate of a deceased party, nor can the surviving partner in community be held accountable for these notes, although it is shown that she has used them.

Cockburn v. *Wilson*, 39

4 Where the evidence shows that the consideration, for which a promissory note was executed, was Confederate treasury notes, payment of such note cannot be judicially enforced. *Pickens* v. *Preston*, 138

5 Parol evidence is admissible to prove want of consideration of a promissory note secured by a public act of mortgage, where the basis of said notes was Confederate treasury notes.

Parker v. *Broas et al.* 167.

6 The orders of General Butler of May 1st and May 18th, 1862, permitting the circulation, for a limited period, of Confederate notes, did not give validity to those notes. *Ib.*

7 Where suit is brought on a written contract to enforce the delivery of cotton alleged to have been bought and paid for, parol evidence is admissible to show that the payment alleged to have been made was in Confederate treasury notes. *Haynes* v. *Rogillio*, 238

See Agency—*Wells* v. *Addison*, 295

" Construction, Rules of—*Fry* v. *Dudley & Nelson*, 368.

" Executors and Administrators—*Succession of Lagarde*, 148

CONFEDERATE OBLIGATIONS:

See Contracts—*Legget* v. *Goodrich*, 165

" Jurisdiction—*Bailey* v. *Gay*, 158

CONSTRUCTION, RULES OF

1 All contracts are to be construed so as to accomplish the intention of the parties, and in determining their provisions, a liberal and fair

CONSTRUCTION, RULES OF—*Continued.*

construction must be given to the words used, either singly or in connection with the subject-matter. This rule of construction applies, whether the contract is between private parties or a legislative grant. *Grant* v. *Leach*, 329

2 In construing a contract, where the State is a party, the rule is, that all rights asserted against the State must be clearly defined, and not raised by inference or presumption. *Ib.*

3 Where the State by legislative act has made a grant, or given a privilege to an individual or a company, and there is reasonable doubts as to the proper construction to be given to the grant, such doubts are to be solved in favor of the State. *Ib.*

4 Where words in a written instrument may convey two different meanings, the one in harmony with, and the other antagonistic to, the law, that construction should always be given to them which will harmonize with the law. *Fry* v. *Dudley & Nelson*, 368

5 The words "in currency" in a bill of exchange means legal currency. *Ib.*

6 Where a party received for collection drafts on a bank in New Orleans, payable in currency, he cannot receive payment in any other than legal currency. His receiving payment in Confederate treasury notes, current at the time, will not release him from liability, because they were not legal currency. *Ib.*

See Evidence—*Mithoff* v. *Byrne, Vance & Co.*, [illegible]

CONTRACTS:

1 Where a party has made a contract in violation of the confiscation laws, he cannot, in order to relieve himself, invoke the nullity therein declared. *Legget* v. *Goodrich*, 165

2 Defendant, Henry Goodrich executed his three promissory notes in favor of A. Legget, administrator, for six thousand dollars, the price of a tract of land, which he purchased on the 16th day of July, 1862, at probate sale, secured by mortgage on the land; plaintiff instituted an hypothecary action to force the payment of the notes, which the defendant resists on the grounds that the sale was a nullity, having been made in violation of the confiscation laws of the United States passed on 17th of July, 1862, the proclamation of the President of the United States, and the military orders of the commanding general: *Held*—That the defendant having alleged and shown that he was, at the date of the sale thus made, engaged in open and active rebellion against the Government, was not in a position to invoke the benefits of the nullities of the sale declared by law, in order to relieve himself from the obligations which he had contracted. *Ib.*

3 On 28th of April, 1859, S. B. Smith & Co., of New Orleans, made a written contract with R. S. Morse & Co., proprietors of the City and Arcade hotels, to furnish them with all the ice they might require for the use of said hotels, for the term of five years, to commence on the 15th June, 1859, at the rate of $15 00, per ton. On the 31st of October, 1861, the contract was so modified as to increase the price of the ice furnished, to $1 50 per hundred pounds, or $30 per ton; this agreement to remain in force during the continuance of the blockade. The blockade was formally raised

CONTRACTS, *Continued.*

July 1, 1862. On the 16th of April, 1863, S. B. Smith & Co., bring suit against R. S. Morse, liquidating partner of R. S. Morse & Co., for $1,252 10, balance due for ice furnished. R. S. Morse, liquidator, filed a plea in reconvention, setting up, that notwithstanding the contract with S. B. Smith & Co., to furnish all the ice required for the two hotels, from 15th of June, 1859, to 15th June, 1864, at fixed rates, he was compelled to buy ice at various times at a much higher rate, thereby increasing the expenses for ice for the two hotels, in the sum of $2,564 61, for which he prays judgment in reconvention. S. B. Smith & Co., sought to avoid the contract on the ground, first that Morse was not bound by it; that he might never want any ice at all, and in that event, Smith would have no remedy. On this point it was held by the Court that the legal principle, that there can be no contract where only one of the parties to it is bound, has no application in this case, because, under the contract, R. S. Morse & Co., were bound to purchase all the ice necessary for their hotels, at a fixed price, from S. B. Smith & Co. The second objection was, that the parties were released by a fortuitous event, to-wit, the *war*. To this objection the Court held that the terms of the contract showed that the parties contracted with reference to the war, and were bound by it. The evidence adduced on trial shows that R. S. Morse & Co., or R. S. Morse, liquidator, did no act which amounted to a waiver of his claim to a performance of the contract. It was finally held by the Court, that S. B. Smith & Co. were bound by their contract with R. S. Morse & Co., and that R. S. Morse, liquidator, recover in reconvention, of S. B. Smith & Co., the amount of $2,564 61, the increased price which they had to pay for ice, on account of the failure of S. B. Smith & Co., to comply with the contract.

S. B. Smith & Co. v. *R. S. Morse & Co.*, 220

4 Contracts entered into between belligerent enemies are absolutely null. *Hennen* v. *Gilman*, 241

5 In the late civil war between the United and the so-called Confederate States, every individual within the military lines of the one, was a belligerent with reference to the other, and a contract entered into between one party, residing within the military lines of the United States, and the other, residing within the Confederate lines, is absolutely null and void. *Ib.*

6 The object of putting in default is to secure the other party in his right to demand damages, or a dissolution of the contract, so that the other party can no longer defeat this right by executing or offering to execute it. *Pratt* v. *Craft*, 291

7 An offer to execute the contract after the party has been put in default comes too late. *Ib.*

8 Where one party to a contract, after being put *in mora*, offers to execute the contract, the other party has, at his option, the legal right to claim damages. *Ib.*

9 Where two parties make a contract whereby one binds himself to do a particular thing, he must show a compliance on his part according to the terms of the contract, before he can compel a compliance

CONTRACTS, *Continued.*

with the terms of tho contract by the other party, or recover the damages he has sustained by the failure on the part of the other party to comply. *Golding* v. *Petit*, 505

CORPORATIONS:

1 In matters within the discretion of the board of directors of a corporate body, their acts, if lawful, although deemed erroneous by some of the members, will bind the corporators, and courts of justice will not interfere to control the manner in which such acts are performed. *Ricau et al.* v. *Baquie et al.*, 67

2 The order of Major General Banks appointing commissioners to liquidate the affairs of the Bank of Louisiana, did not, *ipso facto*, destroy the charter of the bank, nor did the violation of any of the corporate powers by the bank operate a forfeiture of its charter. *Bank of Louisiana* v. *Green*, 214

3 The charter of an incorporated institution can only be forfeited by the authority of, and under such proceedings as are prescribed by law. *Ib.*

CRIMINAL LAW AND CRIMINAL PROCEEDINGS:

1 The jurisdiction of the Supreme Court in criminal cases is not confined to the examination of questions arising before, or after verdict; nor is the right of appeal limited to either party. *State* v. *Cason*, 48

2 A party tried and convicted on a defective indictment, has not been put in jeopardy; for the judgment must be arrested on motion, and the accused may be proceeded against on a new indictment. *Ib.*

3 The indictment charged the defendant with larceny of "goods and lawful money of the United States, (commonly called greenbacks) of the value of twenty-four dollars, and twenty-five cents:" *Held* That the indictment is defective, and judgment must be arrested. No such effects or notes as "greenbacks" are known in law. *Ib.*

4 Where the indictment has been quashed for want of proper averments, and judgment has been arrested, the prisoner will be remanded to await the action of the court on a new indictment. *State* v. *Cook*, 130

5 In criminal trials the judgment of the Court must follow and conform to the verdict of the jury. *State* v. *Rose and Abrahams*, 143

6 Where the verdict of the jury is "guilty as accessory," and the judgment of the Court on the verdict condemns the party to suffer the penalties of the crime of accessory before the fact, the judgment of the Court will be annulled, the verdict of the jury set aside, and the case remanded to be proceeded with according to law. *Ib.*

7 An accessory before the fact is equally guilty with the principal, and on conviction must suffer the same penalties. The punishment of an accessory after the fact is only fine and imprisonment. *Ib.*

8 It is no objection to the validity of an indictment that several offences of the same nature, and upon which the same or a similar judgment may be given, are charged in different counts; nor is the prosecuting officer obliged to elect on motion of the accused. *State* v. *Cook*, 145

9 The method of stating the same accusation in different ways, in sep-

CRIMINAL LAW AND CRIMINAL PROCEEDINGS, *Continued.*

arate counts, is adopted in order to prevent a variance from the proof on trial. *Ib.*

10 It is the duty of the District Attorney to cause a list of the jurors to be served on the accused before trial, but it is too late after the trial to urge this objection. *Ib.*

11 The indictment charges the accused with the crime of robbery, without stating that the act was done feloniously, or that the goods were taken from the person of another, or in his presence by putting him in fear: *Held*—That the indictment is defective in not containing the essential substantive averment "feloniously," required by the common law in criminal pleading, which system of criminal pleading was adopted by the Legislature of Louisiana in 1805. *Ib.*

12 These essential substantive averments in a bill of indictment, required by the common law, are not dispensed with by the statute of 1855. This statute was not intended to make a radical change in the system of criminal pleadings, but to simplify it, and correct some supposed deficiencies. *Ib.*

13 Where a party has been arrested, and on examination no cause is shown for the arrest, malice will be presumed, and damages may be recovered for malicious prosecution. *Hayes* v. *Hayman*, 336

14 Where there is want of probable cause for the arrest, malice will be inferred. *Ib.*

15 Express malice may be proved. *Ib.*

16 In an action for damages for malicious prosecution, it is sufficient to show that the criminal proceedings were entirely without cause. *Ib.*

17 Where the petit jury returns a special verdict, they must find all the circumstances which constitute the offence, otherwise the judgment of the Court rendered thereon will be erroneous.
State v. *Davis*, 354

18 A party indicted for a crime, has the right to challenge the array of the jury empanelled to try him, and, if the jury has been illegally drawn, the panel will be quashed, notwithstanding every member thereof may possess the personal qualifications requisite for a juror.
State v. *DaRocha et al.*, 356

19 Where the petit jury have not been drawn in the mode prescribed by law, the trial, conviction and sentence are null, and the prisoner stands as though he had not been tried. *Ib.*

20 The appellate jurisdiction of the Supreme Court, in criminal cases, is limited to questions of law alone, and must be presented by bill of exceptions or assignment of errors. *State* v. *Behan*, 389

21 In a criminal case, where there is no bill of exceptions nor assignment of errors, and there is no error patent in the record, the judgment of the District Court will be affirmed. *State* v. *Krepple*, 402

22 In a criminal case, where no bill of exceptions nor assignment of errors is found in the record, and no error of law appears in the proceedings, the judgment of the District Court will be affirmed.
State v. *Morel et al.*, 402

23 The intention of a party, charged with the commissions of a crime, is an essential averment in a bill of indictment. *State* v. *Durbin*, 408

CRIMINAL LAW AND CRIMINAL PROCEEDINGS, *Continued.*

24 A bill of indictment cannot be amended by inserting a word essential to make it valid, such as feloniously. *Ib.*

25 Where the statute has adopted a common law offence, by fixing a penalty to it, without otherwise defining the crime, all the common law requirements must be followed in the indictment. 9 A. 211. *Ib.*

DAMAGES:

1 In cases of damage, where no exact computation can be made, discretion in fixing the amount is left to the Judge and jury. C. C. 1928, section 3. *Frank* v. *N. O. & Carrollton R. R. Co.*, 25

2 In an action for vindictive damages for an unfounded and malicious suit, both malice and want of probable cause must be alleged and proved to entitle the party to recover. *Dickinson* v. *Maynard*, 66

3 Where it is shown that an attachment has wrongfully and illegally issued, the party whose property has been attached, is entitled to recover the actual damages proved. *Ib.*

4 The measure of damages to be recovered on an attachment bond, is the actual expense and loss resulting from the levying of the attachment, including the fees of counsel, rendered in relation to the attachment. *Ib.*

5 Rail-road companies are responsible in damages for the destruction or injury done to horses, mules, or other stock, by running over them on the track, and the burden of proof is on the company to show that the accident was unavoidable.
Lapine v. *N. O., Opelousas and Great Western Railroad Co.*, 158

6 The amount of damages is the value of the stock destroyed. *Ib.*

7 The prescription of one year does not apply to actions for damages *ex contractu.* *Lallande* v. *Ball*, 193

8 The law does not require that a reconventional demand for damages shall be liquidated. *Ib.*

9 Where a contractor, in laying the pavement on the banquette in any one of the streets in the city of New Orleans, destroys or takes up the shade trees which have been planted there, he is liable in damages to the owner of the property that owes the taxes for making the pavement. The amount of the damages is a question of evidence. *New Orleans* v. *Wire*, 500

SEE CONTRACTS—*Pratt* v. *Craft*, 291
" CRIM. LAW and CRIM. PRO.—*Hayes* v. *Hayman*, 336
" NEW ORLEANS—*Fennimore* v. *New Orleans*, 124
" " " *Fauvia* v. *New Orleans*, 410

DISTRICT ATTORNEY:

1 The Statutes of 1855, section 70 and 71, Session Acts, page 162, providing that the several District Attorneys throughout the State shall be entitled to demand and receive one-fifth of all sums, first deducting the per centage allowed by law to the sheriff for collecting, and paying over the same, which may be collected on forfeited bonds, recognizances and fines imposed in criminal prosecutions, must be construed as referring to fines and forfeitures growing out of violations of the criminal laws of the State, and in the imposing and collecting of which the services of the District Attorney and

DISTRICT ATTORNEY, *Continued.*

sheriff are required. Where no services are required of a public officer, no compensation is allowed. *Foute* v. *New Orleans*, 22

2 The law does not require the District Attorney of the parish of Orleans to appear in his official capacity, and prosecute persons for violations of law before the Recorders' Courts of the city of New Orleans, nor does it allow him any compensation for doing so. *Ib.*

DOMICIL:

1 The evidence shows that George C. Waddill resided in the parish of Madison, for a number of years, with his family, on his plantation; that he left there with his family and most of his hands in 1863, and moved to the parish of Jackson; that in 1865 he removed to New Orleans, where he bought a residence, in which he and his family have since resided. Suit was brought against him in the city of New Orleans in the year 1866, to which he excepted, on the ground that his domicil was in the parish of Carroll, a place where it does not appear that he has ever resided: *Held*—That in the election of his domicil, in the parish of Carroll, he must be considered as having abandoned his original domicil, in the parish of Madison, and the sheriff's return on the citation, showing that service was made at his residence in the city of New Orleans, is *prima facie* evidence, which throws the burden of proof on him to rebut. *Aller* v. *Waddill*, 246

2 The actual continuance of residence of a newly married couple, at one establishment, for more than one year, is sufficient to fix their domicil. *Sanderson* v. *Ralston*, 312

3 A domicil once acquired cannot be lost, until the party acquires another. *Ib.*

4 The domicil of the husband will control that of the wife. *Ib.*

5 George Ralston and Eliza J. Sanderson were married in 1852. Soon after the marriage they removed to their plantation, in the parish of Concordia, La., where they both resided for more than one year. Mrs. Ralston then moved to Mississippi, to the high lands, on account of her failing health. Ralston still remained on the plantation in Concordia parish, exercising all his rights and privileges as a domiciliated citizen of Louisiana; such as voting, serving on the jury when called on, and was at one time a member of the police jury of the parish. He spent a considerable portion of his time in Mississippi, at the residence of his wife with his family. Under this state of facts, it was *held* that Ralston, having acquired his domicil in Louisiana, and not having acquired one elsewhere, he must still be considered as domiciled here, notwithstanding the fact that his wife never returned to Louisiana to reside. The domicil of the wife being controlled by that of the husband, the legal domicil of Ralston and wife is still in Louisiana. *Ib.*

6 The domicil of the husband controls that of the wife. *Succession of Christie*, 383

7 Where the husband, domiciled in Louisiana, dies, leaving property in the State, the surviving wife is entlitled to the benefit of the Homestead law, notwithstanding she has never resided in the State. *Ib.*

DONATION:

1 A donation by the ancestor in due from, in consideration of the mar-

DONATION, *Continued.*

riage of his daughter, is neither an alienation nor a mortgage of the property donated, and the law of 1855, prescribing the mode of registry of conveyances of immovable property, does not apply. *Bank of New Orleans* v. *B. Toledano*, 571

2 A donation by the father to his daughter, in consideration of marriage, of certain lots of ground in the city of New Orleans, will operate as notice to third parties, when recorded in the book of Donations in the mortgage office in the manner pointed out in Art. 1541, C. C. *Ib.*

3 Every donation *inter vivos*, though made to the husband and wife, or to either of them, is subject to the general rules prescribed for donations under that title. *Ib.*

ELECTION:

See Rail Roads—*State* v. *N. O. and Jackson R. R. Co.* 489

EMANCIPATION:

1 Where judgment has been rendered in the District Court, before emancipation, for the enforcement of payment for a slave, the Supreme Court will not now affirm, neither will they reverse said judment, but will simply dismiss the appeal. *Delaporte* v. *Bourg*, 152

2 The sale of a person (slave) at probate sale after the Proclamation of Emancipation by the President of the United States, conferred no title to the purchaser, and by the doctrine settled in the case of Wainwright v. Bridges, (19 An. page 234,) he is relieved from the payment of the price. *Posey* v. *Driggs*, 199

EVIDENCE:

1 Where a party, after having received the full benefit and advantage of a contract, comes into court and alleges his own turpitude, and invokes the law of morality, to relieve himself of the execution of his part of the contract, and by that means to enrich himself at the expense of the other party, he must adduce evidence so complete that it carries with it conviction with all the power of demonstration. *Weaver* v. *Anfoux*, 1

2 The courts of this State will not give effect to an agreement entered into for an immoral or fraudulent purpose, but such fraudulent and immoral purpose must be clearly made out, and not left to surmise or conjecture. *Ib.*

3 The evidence shows that defendant executed his promissory notes in favor of plaintiff, secured by mortgage on real estate, and received from plaintiff, as the consideration for the notes and mortgage, checks on the bank for the amount of the notes, less the interest, in the ordinary form, payable in no particular currency; and further that checks of the bank were either paid in bank notes or Confederate treasury notes. Defendant now seeks to avoid the payment of the notes on the ground that the consideration for which they were given was Confederate treasury notes: *Held*—That this evidence does not establish with the legal certainty required that the consideration was Confederate treasury notes. *Ib.*

4 Where one of the parties to a contract seeks to avoid its effect on the ground that the consideration was illegal and immoral, he must in order to relieve himself adduce evidence so complete that nothing

EVIDENCE, *Continued.*

is left to surmise or conjecture. The doctrine in the case of Weaver v. Anfoux (ante page 1) reaffirmed. *Tompkins* v. *Thornhill*, 47

5 Defendant executed six promissory notes in favor of himself, and by him endorsed in blank, secured by mortgage for the sum of $30,000, which he gave to Abat, Generes & Co., and received from them their check on the Citizens' Bank for $28,000, payable to and endorsed by Thornhill & Co., which was deposited in some other bank, and collected in the next morning's *exchanges between banks.* Nothing was said at the time of the agreement about the currency to be received. The proof further shows that at the date of the check, Generes & Co., had not in the Citizens' Bank, subject to their checks anything but Confederate currency; that general checks were paid in such currency, and that plaintiff acquired the notes in suit sometime before their maturity for a valuable consideration: *Held*—That this state of facts does not establish, with that legal certainty required in such casse, the allegation that the loan was made to defendant in Confederate notes. *Ib.*

6 It is not necessary to allege that the note was protested and notice given in order to admit the protest in evidence. The act of protest and certificate of notice are proper evidence under the allegation to prove demand. *Bank of Kentucky* v. *Goodale*, 50

7 Where evidence has been received without objection on points not presented by the pleadings, the parties are bound by it.
Clark and Brisbin v. *Bouvain & Lewis*, 70

8 Where a certain species of evidence is conclusive on the point, the failure to produce it by the party on whom the burden of proof devolves, carries with it the presumption that it does exist.
Succession of Hubee, 97

9 The testimony of one witness is insufficient to establish a claim of more than five hundred dollars; but where the commercial books of the opposite party, having been introduced in evidence, corroborate his testimony, he may establish the correctness of his claim, though above five hundred dollars.
Goldsmith, Haber & Co., v. *Friedlander & Gerson*, 119

10 Where the defendant alleges that the endorsement was made after maturity, the burden of proof is on him to show the fact. *Ib.*

11 The legal presumptions in favor of a party relieve him from the necessity of adducing any evidence, until they are rebutted by proof.
New Orleans, Canal & Banking Co. v. *Templeton*, 141

12 Where the claim is invalid evidence is not admissible to establish its correctness. *Board of Levee Commissioners* v. *Harris*, 201

13 A judgment creditor of an estate took a rule on the executrix to file an account of her administration, and offered the judgment in her favor as evidence that she was a creditor, to which the executrix objected, on the ground that the note on which the judgment was founded was not legally stamped; plaintiff in rule offered the note which was legally stamped; defendant then offered the whole record in the case to show the absolute nullity of the judgment, to which plaintiff objected, on the ground that collaterally the defendant

EVIDENCE, *Continued.*

could not go behind the judgment and prove facts to annul the same: *Held*—That the record was admissible as rebutting evidence. *Succession of Patrick*, 204

14 The burden of proof is on defendant to show that the consideration of a promissory note was the price of a slave. *Robinson* v. *Doherty*, 209

15 The rule enunciated in Article 2256 of the Civil Code, that parol evidence is inadmissible to contradict or vary the contents of a notarial act of mortgage, only applies to acts intrinsically valid, and not to such as are attacked to be declared null on account of fraud. *Cox & Co.* v. *Estate of King*, 209

16 An intervention by the wife in a pre-existing suit between the creditors and the estate of her husband to annul her renunciation in an act of mortgage executed by her husband, is a direct action, and parol evidence is admissible to prove the nullity on account of fraud, on the general principle that fraud vitiates all contracts. *Ib.*

17 The burden of proof is on the party complaining, to show that the Judge of the District Court granted an order of seizure and sale, without having the proper evidence before him. The presumption is, that the Judge had the proper evidence before him at the time he granted the order. *Bloom* v. *Martin*, 256

18 A receipt given in satisfaction of a judgment is only *prima facie* evidence of what it contains, and may be shown to contain error of fact. *Dunn* v. *Pipes*, 276

19 Evidence received without objection, and admissions made in the record, must have their weight, although unauthorized by the pleadings. *Draper* v. *Richards*, 306

20 In a suit to enforce a right of servitude, parol evidence is admissible to prove possession of the property claiming it. *Macheca* v. *Avegno*, 339

21 Parol evidence is inadmissible to explain an ambiguity *apparent* on the face of a written instrument. Doubts and uncertainties that exist in a written contract of sale, must be construed against the parties making it. *Mithoff* v. *Byrne, Vance & Co.*, 368

22 Where evidence has been admitted, without objection in the lower court, the Supreme Court will consider it, though it might have been excluded on legal grounds. *Nusbaum* v. *Marks & Co.*, 379

23 The rule that the evidence of one witness is insufficient to establish a claim of more than five hundred dollars, does not apply where the ownership of property is in dispute valued above five hundred dollars. *Field* v. *Harrison et al.*, 411

24 The promise of an endorser to pay the note, if the holder would not protest it, amounts to notice, and may be proved by parol evidence. *Helm* v. *Ducayet et al.*, 217

25 Although the amount of the note is above five hundred dollars, the evidence of one witness is sufficient to prove the promise to pay it. *Ib.*

26 A recorder or notary public, who passes an act of sale between parties, is a competent witness to testify as to what was said by the parties at the time or afterwards. *Finley et al.* v. *Bogan et al.*, 443

EVIDENCE, *Continued.*

27 Testimony taken by commission, rejected by the lower court, attached to a bill of exceptions, taken by the party offering it, and forming a part of the record of appeal, will be noticed by the Supreme Court the same as though it had been admitted by the Judge *a quo*. *Ib.*

28 Where it is shown by affidavit, and the statement of the witness under oath, that he is employed in the United States navy, his testimony, taken by commission, will not be rejected on the ground that he was within the jurisdiction of the court at the time.
Golding v. *Steamer America*, 455

29 Evidence not inadmissible on legal grounds will be received, the jury being the judges of its effect. *Ib.*

30 In a suit to annul a sale, on the ground of fraud and simulation, or defend a seizure of property under a writ of *fieri facias*, which has been enjoined, evidence of the conversations and admissions of the parties implicated in the fraud or simulation, is admissible when offered by the attacking creditor.
Bushnell v. *City National Bank*, 464

31 A resolution of the directors of a bank, authorizing the president to release an agent from all liability on account of transactions with the bank, together with the release, are admissible testimony, where his competency as a witness is attacked on the score of interest.
State v. *Louisiana State Bank*, 468

32 The burden of proof is on the party claiming cotton or other property, that he alleges is in the possession of another, and he will be entitled to recover only the quantity that he succeeds in identifying by proof. *Ib.*

33 The assumption of the debt of another must be strictly proved.
Buddecke v. *Harris*, 563

SEE CONFEDERATE TREASURY NOTES—*Haynes* v. *Rogillio*, 238
" DAMAGES—*Lapine* v. *N. O., O. & G. W. R. R. Co.*, 158
" NEW ORLEANS—*Fauvia* v. *New Orleans*, 410
" PRACTICE—*Kirtland* v. *Harris*, 153
" " *Hennen* v. *Gilman*, 241
" SALE—*Hamilton* v. *Eimer & Co.*, 301

EXECUTORS AND ADMINISTRATORS:

1 A testamentary executor derives his authority from the judgment ordering the registry and execution of the will, and appointing and confirming the executor. Letters testamentary are merely the evidence establishing the fact, that the executor has been duly qualified.
Succession of Vogel v. *Vogel et al.*, 81

2 Where the will names the executor, and the judgment of the Court confirms the party named in the will as testamentary executor, the judgment must have effect until reversed on appeal, or in an action of nullity. *Ib.*

3 A testamentary executor, after he was duly qualified, and had charge of the estate, by refusing to take the oath of allegiance required by the Government of the United States, and going beyond the jurisdiction of the proper authorities, became *functus officio*, and lost all right to administer the property of the succession any further, and

EXECUTORS AND ADMINISTRATORS, *Continued.*

all claims to commissions, except on sums recovered by him prior to the abandonment of his trust. Succession of Poindexter, 19 An. page 22. *Ib.*

4 Where an administrator deposits funds of the estate with a commercial house, or in a bank, in his own name and to his own credit, he thereby becomes personally responsible to the estate for the amount. *Succession of Lagarde*, 148

5 The administrator received Confederate treasury notes in payment of debts due the estate: *Held*—That such notes, having no legal existence or value, could not be recognized as receivable in extinguishment of debts or obligations due the succession, and the administrator became personally responsible to the estate for the amount thus received. *Ib.*

6 The law does not contemplate the sale, by the administrator, of more property than is necessary to pay the debts and defray the expenses of administration. *Succession of Phelan* v. *Bird et al.*, 355

7 A party may demand a recognition as heir; an account of the administration; and the property in the hands of the curator, in the same suit. *Miller* v. *Rougieux*, 577

8 The homologation of an account and tableau of distribution, filed by the curator, of the proceeds of the sale of an estate, will not estop the heir, who was a non-resident at the time, from proceeding against the curator for the remainder of the proceeds of the sale of the succession property in his hands. *Ib.*

9 The curator will be responsible to the heir for the payment of a fraudulent and fictitious claim with the funds of the succession, notwithstanding the same has been homologated by the Judge. *Ib.*

10 A suspensive appeal taken by the executor or administrator of an estate, from a judgment in favor of a creditor, will not prevent the creditor from proceeding against the executor or administrator by motion, for an account showing the condition of the estate, and the amount of funds on hand, while a suspensive appeal is pending in the Supreme Court. *State, ex rel., Champlin*, 580

11 A *mandamus* will lie to compel the District Judge to take jurisdiction of, and try the motion by the creditor, calling on the executor for an account, pending the suspensive appeal. The District Judge is only divested of jurisdiction, pending a suspensive appeal, in all matters pertaining to or involved in the judgment appealed from. *Ib.*

SEE PRACTICE—*Succession of Perret*, 86
" SUCCESSIONS—*Succession of Sutton*, 150
" " " *Rohlfing*, 376

EXPROPRIATION:

1 Private property can only be expropriated when it is necessary for the public use. The question whether the property sought to be expropriated is necessary for the public use or convenience, must be judicially determined. *Lecoul* v. *Police Jury of St. James*, 308

2 The city of New Orleans, having decided that it was to the public interest to become the *owner of the soil* necessary to construct a levee and establish a public road, adopted the mode of *expropriation* pre-

EXPROPRIATION, *Continued.*

scribed by law, by empaneling a jury of freeholders. The jury made their report of the quantity of ground necessary for the comtemplated levee and roads, and estimated the value thereof: *Held*—That the city, having elected this mode of proceeding, she is bound by the rules and regulations prescribed in such cases.

New Orleans, Praying for a Jury of Freeholders, 394

3 A jury of freeholders have no authority to fix their own compensation for their services; they are governed by the rules regulating all other juries, in regard to their compensation. *Ib.*

4 Where the City of New Orleans petitions for the opening of a street, and experts are appointed to appraise the property taken for that purpose, and one of the owners of property taken, expresses his satisfaction with the price fixed by the appraisers of his property, the city is not bound by his approval as to him; she still has the right to show that the appraisement is too high. The order of Court confirming the appraisement is necessary to bind the city.

New Orleans, Praying for Opening of Streets, 497

5 The power of making local assessments for local improvements, is not taxation, within the meaning of the Constitution, and does not therefore conflict with that provision of the Constitution which requires taxation to be uniform. *Ib.*

6 Property lying in the neighborhood of an improvement, whether taken or not, is liable to be assessed for the proportion of benefit derived from such improvement. *Ib.*

7 To authorize the assessement of a tax for an improvement, it must be shown that the property assessed is benefited by the improvement. *Ib.*

FRANCHISES:

1 Where the Legislature has conferred on an individual or a company, an exclusive privilege or monopoly in a grant or license, and limited that monoply to a number of years, after the expiration of which it shall cease, the expiration of that time will not abridge or impair other privileges contained in the grant or license, (such as collecting toll, etc.,) in perpetuity. *Grant* v. *Leach*, 329

2 The franchises and prerogatives conferred on an individual or a company by the Legislature in a grant or license, do not cease with the expiration of the time specified in the grant at which the monopoly shall cease. *Ib.*

FRAUD:

1 Where a notarial act is sought to be declared null on the ground of fraud, the notary who passed the act need not be made a party to the suit. *Cox & Co.* v. *Estate of King*, 209

GARNISHMENT:

1 A garnishee or third party to whom interrogatories are propounded under a *fieri facias*, can set up any defence necessary to his own protection, whether against the defendants or their creditors. He is competent to urge the plea of prescription.

James v. *Fellows*, 116

2 The act of the Legislature of 1839, providing that no attorney or counsellor at-law shall give evidence of anything that has been

GARNISHMENT, *Continued.*

confided to him by his client, without the consent of such client, cannot be construed to exempt or shield the property of the client in the hands of the attorney from the pursuit of his creditors.
White et al. v. *Bird*, 188

3 The garnishee my be excused from answering any particular interrogatory, if he declare, on oath, that he cannot answer the same without disclosing matters confided to him by his client, or advice given his client concerning the business about which he is retained.
Ib.

4 Where an attorney-at-law has in his possession for collection, as shown by his answers to interrogatories, promissory notes owned in part by the judgment debtor of the plaintiff, the interest which the defendant has may be seized in the hands of the garnishee, and sold for the benefit of the judgment creditors: after notice to the garnishee he can do no act to the prejudice of the seizing creditors. *Ib.*

5 A party on a negotiable promissory note originally given to defendant cannot be held liable on a garnishment, when it is not shown that the note is in the possession of the defendant; in such a case payment of the judgment in garnishment would not protect him against liability on the note in third hands. *Denham* v. *Pogue*, 195

GRANT'S PASS:

1 Vessels navigating the waters of the Gulf cannot use the *canal* or *pass* on the coast of Alabama, known as Grant's Pass, without paying the toll and charges imposed by the grantee on vessels passing through, notwithstanding the time fixed by the grantor (the Legislature of Alabama) for which the monopoly was permitted, has expired.
Grant v. *Leach*, 329

HIGHWAY:

See Prescription—*Ingram* v. *Police Jury*, 226

HOMESTEAD:

See Mortgages—*Roupe* v. *Carradine et al.*, 244

HUSBAND AND WIFE:

1 The wife has the right to purchase property in her own name for her separate advantage, and pay for it out of her paraphernal funds. C. C. 2361. *Cockburn* v. *Wilson*, 40

2 Property purchased during the marriage with the paraphernal funds of the wife, belongs to her alone, and she has the right to administer it personally without the assistance of her husband. *Ib.*

3 A judgment rendered against a married woman, without her being authorized to appear in court, is null.
White et al. v. *Bird et al.*, 281

4 An answer filed by a married woman, unauthorized to appear in court has no legal effect. *Ib.*

5 The wife's mortgage on the property of her husband, to secure the payment of her paraphernal funds which have come into his hands, dates from the time the husband receives the funds.
Wallace v. *McCullough*, 301

6 The wife has the right at all times to resume the administration of her paraphernal estate, and the husband is not responsible to her for failing to collect funds or assets belonging to her during his

HUSBAND AND WIFE, *Continued.*

administration of her affairs, she could at any time resume the administration, and protect herself. *Ib.*

7 The wife must bear the loss which she sustains by failing to enforce her legal rights. *Ib.*

8 A married woman may invest in her own name, and for her individual benefit, her paraphernal funds under her separate administration and control. *Shaw* v. *Hill et al.*, 531

9 The declaration in the act of sale, that the property was paid for out of the separate funds of the wife will not relieve her from the burden of proving that the purchase was made with her paraphernal funds under her separate administration. *Ib.*

SEE COMMUNITY—*LeBlanc* v. *LeBlanc*, 206
" " *Surlis* v. *Hienn*, 229
" DOMICIL—*Sanderson* v. *Ralston*, 312
" " *Succession of Christie*, 312
" PRESCRIPTION—*Weil* v. *Brand & Adams et al.* 247
" WITNESSES—*Carter* v. *Taylor*, 421

INJUNCTION:

1 The police jury of a parish may be prohibited by a writ of injunction from building bridges across navigable rivers running through the parish so as to obstruct the free navigation thereof.
Ingram v. *Police Jury of St. Tammany*, 226

2 An injunction against the City of New Orleans may be dissolved on motion without bond. The statute exempting the City from giving bond in all judicial proceedings to which she is a party is general, and applies to the dissolution of injunctions.
Wells v. *New Orleans*, 300

3. Where an injunction is dissolved, no damages can be allowed to the party enjoining. *Gordon* v. *Police Jury*, 334

4 An injunction will not be maintained, on grounds which might have been pleaded before judgment. *Lee* v. *Hubbell*, 551

SEE JURISDICTION—*State, ex rel. Villavaso*, 521

INSOLVENCY AND INSOLVENT PROCEEDINGS:

1 Where proceedings have been commenced in the State courts under the State insolvent laws, they stand unaffected by the United States Bankrupt law, enacted since the proceedings were commenced.
Longis v. *His Creditors*, 15

2 Where the penal clauses of the State insolvent laws can be made operative, effect must be given to them. The insolvent laws of the State of Louisiana provide that, an insolvent debtor convicted of fraud shall forever be deprived of the benefit of laws passed in favor of insolvent debtors in this State, and shall be sentenced to imprisonment for a term not exceeding three years. Act of 15th March, 1855, section 27. *Ib.*

3 The passage of the Bankrupt law by the United States repealed all State insolvent laws, and they have no vitality, except for such cases as were pending in the State courts at the time of the passage of the law. *Ib.*

4 Where a judgment has been rendered homologating a tableau of distribution in insolvent proceedings, the creditors, named on the tableau

INSOLVENCY AND INSOLVENT PROCEEDINGS, *Continued.*

and included in the judgment, are not entitled to notice of the judgment of homologation.

State, ex rel., Louisiana State Bank, 110

5 A writ of *mandamus* will not lie to compel the District Judge to grant a suspensive appeal from a judgment homologating a tableau of distribution in insolvent proceedings, after the lapse of ten days from the date of the judgment. *Ib.*

6 A respite is based on the supposed solvency of the debtor.

Gaillard v. *His Creditors*, 143

7 Where a party offers himself as a judicial surety, he must have sufficient property to satisfy the obligation thereby incurred; the fact that he has asked a respite from his creditors will not disqualify him. *Ib.*

8 The fact that a party is not able to satisfy promptly with ready money, all his liabilities is no evidence of his insolvency. *Ib.*

9 By the act of the Legislature of March 15th, 1855, the Judge of the District Court is empowered, under certain circumstances, to authorize the sheriff to perform the duties of syndic of the creditors of insolvents. *Tournillon* v. *His Creditors*, 181

10 The decree of the Court authorizing the sheriff to perform the duties of syndic, is an appointment to that trust, and must have its effect until reversed on appeal, or set aside by direct action of nullity. *Ib.*

11 Where the sheriff has been designated as syndic of the creditors of an insolvent by decree of the Court, no other person can be appointed until the appointment of the sheriff has been revoked or annulled. *Ib.*

12 Merchandise that has been stored with a storekeeper, who afterwards becomes insolvent, and makes a surrender of his property, may be recovered by the owner, notwithstanding it has been included in the surrender. *Rose* v. *Smith*, 218

13 Where a debtor becomes insolvent, the rights of the creditors are fixed at the moment of the surrender, and none of them can do any act thereafter that will impair the rights of the others.

Ventress v. *His Creditors*, 359

14 The homologation of a tableau wherein not opposed is *absolute*, and no creditor can make opposition thereafter, nor can he avail himself of oppositions filed by others before homologation. *Ib.*

15 A party desiring to avail himself of the benefit of the insolvent laws of the State of Louisiana, must comply strictly with the requirements of the statute. *Burdon* v. *His Creditors*, 364

16 The discharge, by a majority of the creditors in number and amount of the insolvent, will not bind the other creditors, unless it is predicated on a strict compliance with the indispensable demands of the insolvent laws. *Ib.*

17 Charges of fraud, in an opposition to the application of an insolvent to be allowed the benefit of the insolvent laws of Louisiana, must be definite and specific. *Ib.*

INSURANCE.

1. Where a vessel at sea suddenly sinks, and no specific cause of the disaster is shown, the presumption of law is that the vessel is unsea-

INSURANCE, *Continued.*

worthy. This principle of law does not apply where the evidence shows that the loss of a vessel at sea by sinking was the direct result of a fire which accidentally broke out in a part of the vessel, from the effects of which the vessel sinks; in such a case it must be held, that the sinking of the vessel is a peril insured against, and the insurers must bear the loss. *Pointer* v. *Merchants' Mutual Ins. Co.*, 100

2 Where a shipper contracts with an insurance company, to insure the safe transportation of a cargo, or portion thereof against marine loss, with the words in the body of the policy "only against *general average* and *absolute total loss*," the underwriters are only bound in case of absolute destruction or total loss of the goods insured. *Gould & Co.* v. *Louisiana Mutual Ins. Co.*, 259

3 Where the vessel has been stranded, and the cargo has been wrecked and sold for salvage, the shippers cannot recover the insurance from the underwriters, under the clause in the policy, "*absolute and total loss.*" *Ib.*

4 The value of the property at the time and place of the inception of the risk must be taken in estimating the loss arising from perils insured against. *Wolf & Pretto* v. *National Marine and Fire Ins. Co. of New Orleans*, 583

SEE COMMON CARRIER—*N. O. Mut. Ins. Co.* v. *N. O. J. R. R. Co.* 302

INTEREST:

1 Interest will not be allowed in the judgment unless prayed for in the petition. *McIntyre* v. *Hall*, 217

INTERVENTION:

1 A third party may, by intervention, have the attachment dismissed, and be decreed the owner of the property attached. *Field* v. *Harrison et al.*, 411

2 Where an amount of money has been loaned for a fixed time, and the interest, which forms the consideration for the loan, is added to the amount and placed in the body of the note, the holder is only entitled to recover the face of the note, with five per cent. interest after maturity. *Johnson* v. *Succession of Robbins*, 569

3 Payments made on a promissory note must first be imputed to the interest due at the time, and afterwards to the extinction of the principal. *Ib.*

JUDGMENT:

1 Where the District Judge, assigned as a reason for judment in favor of the plaintiff, "when the Court, considering the law and evidence," it is ordered, etc., it is as much a reason for judgment in favor of defendant as plaintiff, and does not meet the requirements of the Constitution of 1864, Art. 76, Tit. 5. *Dorr* v. *Jouet*, 27

2 A judgment rendered by the lower Court, on issues not made by the pleadings, will be reversed on appeal. *Patterson* v. *New Orleans*, 103

3 A judgment is inchoate during the delay allowed to move for a new trial; and the signing thereof previous to the expiration of that delay will not make the judgment final. *McWillie* v. *Perkins*, 168

4 A judgment granting a new trial is an interlocutory order from which no appeal lies. *Ib.*

JUDGMENT, *Continued.*

5 Where the evidence leaves the right of plaintiff in doubt, the Court, in the exercise of a sound discretion, should render a judment of nonsuit. *Yorke* v. *Allen*, 237

6 The law does not require the Judge *a quo* to render a judgment of nonsuit on motion of plaintiff. *Ib.*

7 A judgment is *prima facie* evidence against third parties, unless directly attacked for fraud and collusion.
Gleason & McManus v. *Sheriff et al.*, 266

8 A judgment, recognizing the lessor's privilege on property, is defective, if it does not fix the date at which the privilege attaches. *Ib.*

9 A consent judgment is binding between the parties and has the force and effect of the thing adjudged, unless reversed in the mode and within the time prescribed by law. *Dunn* v. *Pipes*, 276

10 Where a judgment has been voluntarily executed, though not coming strictly and technically within the rule of the thing adjudged, can neither be attacked nor questioned by a party who has voluntarily acquiesced in its execution. *Canal and Banking Co.* v. *Lizardi*, 285

11 A judgment acquiesced in must, as to the parties to it, have the force and effect of the thing adjudged. *Ib.*

12 A judgment of the District Court, dismissing a party from the office or trust of liquidating partner, and ordering him to turn over all the assets in his hands to the executor of the estate, having been executed by the liquidator complying, cannot afterwards be questioned by him, nor can it be questioned by any other party who sought by appeal to have the judgment dismissing him reversed. *Ib.*

13 Where the Judge of the District Court has *ex officio*, made an order in general terms granting a new trial in a cause, he cannot afterward, and before the new trial, sign the judgment as to one of the parties defendant. An execution issued on a judgment thus signed, will be quashed on motion.
Converse, Harding & Co. v. *Bloom, Kahn & Co.* 555

14 A judgment of the District Court that has been improperly signed and altered by the Judge, can be corrected only by appeal.
Levi v. *Converse, Harding & Co.* 558

15 Execution of judgment can only be arrested by an injunction. *Ib.*

16 A suspensive appeal from a judgment on a rule to quash a *fieri facias*, will not suspend execution on the judgment. *Ib.*

See Husband and Wife—*White et al.* v. *Bird et al.*, 281

JUDICIAL SALE:

1 A sale of property by an auctioneer, under an order of court, which, prior to the day of sale, has become inoperative, is a nullity, and the purchaser is not bound to comply with his bid.
Succession of Michel, 233

2 A purchaser of real estate at probate sale is not bound to look beyond the *decree* recognizing its necessity. 19 An. 353.
Sizemore et al. v. *Wedge et al.* 124

3 The jurisdiction of the Court is an essential inquiry, but the truth of the record concerning matters within its jurisdiction cannot be disputed. *Ib.*

4 Where property is sold at probate sale under an order of Court, the

JUDICIAL SALE, *Continued.*

sheriff must state, with certainty and clearness, the price or sum which each particular piece brings. *Ib.*

5 Where the sheriff sells two tracks of land under the same order, on the same day, and at the same time, and specifies that the whole property brought the sum of $4,000, and one piece thereof brought the sum of $1,500, the proces-verbal, thus made, fixes with certainty the amount that the other piece brought, to-wit: $2,500. *Ib.*

See Practice--*Succession of Armat*, 340

JURIES AND JURORS:

1 Under the act of the Legislature of 15th of March, 1855, sec. 7, all registered voters, and none others, are competent jurors for the parish of Orleans. *State* v. *Charles Morgan et al.*, 442

2 After the completion of the registration of the voters in the parish of Orleans, under the acts of Congress, commonly called Reconstruction Laws, passed in 1867, none others than those registered as qualified voters under such registration, are competent jurors for the parish of Orleans. A jury drawn and formed from any other or former list of registered voters is illegal. *Ib.*

3 A juror, who has been excused from serving in the panel for which he has been drawn, cannot be summoned by the sheriff to serve as a talesman juror in the same panel from which he has been discharged. *Golding* v. *Steamer C. Castro et al.*, 458

4 In questions of fact, where the evidence is contradictory, the verdict of the jury is entitled to weight, and will not be disturbed unless it is manifestly erroneous. *Ib.*

See Crim. Law and Crim. Proceedings—*State* v. *Davis*, 354
" " " " " *State* v. *DaRocha et al.*, 356

JURISDICTION:

1 After suit has been filed and a judgment by default entered, the parties plaintiff and defendant, agreed in writing to submit the matters in dispute to arbitrators, named in the writing; they afterwards met, and plaintiff and defendant submitted their respective claims, but before a decision was reached, the defendant declined to abide by the result, and said he would refer the whole matter to the courts. Plaintiff afterwards confirmed the default, and defendant enjoined the execution, and sued to annul the judgment on the ground that from the date of submission in writing to arbitration, the Court was without jurisdiction in the cause: *Held*—That the agreement in writing to submit the matter in dispute to arbitration, did not *ipso facto* deprive the court of jurisdiction over the case. *Fielding* v. *Westermeier*, 59

2 Where the facts show that the succession of a deceased person has not been opened, nor is it pending in the Second District Court of New Orleans, while a case is pending in one of the other District Courts against the deceased party, commenced before his death, the Second District Court is not vested with exclusive jurisdiction by the act of the Legislature of 1864, which provides that the Second District Court shall be strictly a probate court. Session Acts 1864, page 85, section 17. *James* v. *Fellowes & Co.*, 116

JURISDICTION, *Continued.*

3 Where judgment has been rendered in the District Court, before emancipation, for the enforcement of payment for a slave, the Supreme Court will not now affirm, neither will they reverse said judgment, but will simply dismiss the appeal.
Delaporte v. *Bourg et al.*, 152

4 The doctrine in the case of Wainwright v. Bridges, (19 A. p. 234) reaffirmed. *Ib.*

5 Where the consideration of a promissory note is shown to be the price of a slave, payment cannot be judicially enforced.
Bourgeois v. *Billin & Perkins*, 153

6 The doctrine in the case of Wainwright v. Bridges, (19 A. p. 234) reaffirmed. *Ib.*

7 Where a party sold a horse during the late war to be used in the interest of the rebellion, he cannot enforce the payment of the price in the courts of the country; the sale being made for an unlawful purpose. *Railey* v. *Gay*, 158

8 Where the evidence shows that the consideration of a promissory note was the price of an African slave, payment thereof cannot be judicially enforced. *Laplace* v. *Bowman et al.*, 234

9 The doctrine in the case of Wainwright v. Bridges, (19 A. p. 234) reaffirmed. *Ib.*

10 A purchaser of real estate and slaves may avoid the contract, so far as the slaves are concerned, by showing what portion of the price was for slaves; it having been judicially determined that contracts growing out of the relation of slavery have no longer any force or effect. See 19 A. 234. *Brou et al.* v. *Becnel et al.*, 254

11 Where a personal judgment has been rendered in one of the District Courts of New Orleans, with a recognition of the mortgage executed to secure the debt, and the debtor dies, and his succession is opened in the probate court, the District Court is not thereby divested of jurisdiction over the case; execution may issue on the judgment, and the mortgaged property be seized and sold to pay it.
State, ex rel., Sauvé, v. *Judge Third District Court*, 311

12 The doctrine in the case of Wainwright v. Bridges, (19 A. 234) reaffirmed. *Morgan* v. *McCoy*, 343

13 Where the consideration of a promissory note is shown to be the price of the sale of a person (slave) payment thereof cannot be judicially enforced. Wainwright v. Bridges, 19 A. 234.
Mollere v. *Lion*, 344

14 A penal bond conditioned that the accused will appear before the First District Court of New Orleans, when called upon, cannot be forfeited, and the securities made liable thereon by a decree of the District Court of the parish of Jefferson. *State* v. *Young et al.*, 397

15 Payment of an obligation, the consideration of which is shown to be the price of a slave, cannot be judicially enforced.
Jeffrion v. *Wilson*, 412

16 Where two parties have obtained patents to the same lands, one from the United States and the other from the State, the question of superiority of title may be ascertained before any court having jurisdiction over the property in controversy. *Ludeling* v. *Vester*, 433

JURISDICTION. *Continued.*

17 Where the United States has parted with its title, private parties, who have rights to the land, may litigate their claims in the State courts. *Ib.*

18 Where the consideration for the transfer of a written contract of sale of a lot of cotton is shown to be Confederate treasury notes it cannot be judicially enforced. *Howard* v. *Yale, Jr. & Co.*, 451

19 The act of the Legislature of 1853, page 190, and the subsequent acts of 1855 and 1865, making the Second District Court of New Orleans exclusively a probate court, and requiring all successions to be opened therein, does not divest the other District Courts of New Orleans of jurisdiction in succession cases pending therein at the date of the passage of the law. In such cases the jurisdiction of the court, when the case is pending, is complete and exclusive until the final termination of the cause. *State, ex rel., Bakewell*, 466

20 Purchases of cotton within the Confederate lines during the late war, under military sanction, were in direct contravention with the statutes of the United States, and the proclamation of the President, and were therefore void. Where transactions that were illegal, have become accomplished facts, they cannot be affected by any action of the courts. *State* v. *Louisiana State Bank*, 468

21 Where the State invokes the aid of its courts to enforce its claims against its citizens, they may avail themselves of every legal defence against the State that they can against any other suitor. *Ib.*

22 The bonds and treasury notes of the State of Louisiana, issued under the authority of the act of the Legislature of 23d of January, 1862, entitled an act to raise money for the State treasury, being emphatically a fund for military purposes, designed to aid the cause of the rebellion against the United States, are absolutely null and void; and no action lies either by the State or any other holder to enforce their payment. *Ib.*

23 The functions of a District Court, in relation to a mandate issued from the Supreme Court to have a judgment executed, are merely ministerial. *State, ex rel., Villavaso*, 521

24 Where the Supreme Court has rendered a final judgment on an appeal, and the mandate is sent back to the lower court for execution, no judgment can be pronounced thereon by the District Court from which an appeal will lie. *Ib.*

25 Where an injunction, sued out against the execution of an order of seizure and sale, has been dissolved by the District Court, and the judgment of the District Court dissolving the injunction has been affirmed on appeal, a second injunction, against the mandate of the Supreme Court, will not lie for any cause which might have been pleaded in the first injunction. *Ib.*

26 The act of the Legislature of 1868, No. 20, transferring all cases on appeal in the Supreme Court under the Constitution of 1864 to the Supreme Court under the Constitution of 1868, does not, *ipso facto*, vest the Supreme Court of 1868 with jurisdiction over the case. *Cushing* v. *Hickle & Co.*, 567

27 Where the amount involved does not exceed five hundred dollars, the

JURISDICTION, *Continued.*

appeal will be dismissed for want of jurisdiction. Art. 74, Constitution of 1868. *Ib.*

SEE EMANCIPATION—*Posey* v. *Driggs et al.*, 199

SEE PRACTICE—*State* v. *Judge Fourth District Court*, 177

LAND GRANTS:

1 It is a recognized principle of jurisprudence in this State, that a *perfect* grant importing a clear divestiture of title from the former sovereign, and transfer of that title to the grantee, requires no act of the new sovereign to give it completeness. *Nixon et al.* v. *Houillon*, 515

2 All lands in the province of Louisiana, at the time of cession to the United States, which had not passed by a perfect title from the government then having control of the country, vested in the government of the United States, by the act of session, as public domain. *Ib.*

LANDLORD AND TENANT:

1 Where the proof shows that a house has been leased for one month at a fixed price, and one-half of the amount paid in advance, and the lessor leases the house to another party, and puts him in possession before the end of the month, the Court will award such damages to the first lessee as the proof shows that he has sustained by the violation of the lease by the lessor. *Grace* v. *Haas*, 73

2 Where a party leases a house in the city of New Orleans for a fixed period of time, and executes his notes for the rent, and continues to occupy the premises after the lease has expired, without giving notice to the lessor, he will be considered as continuing the lease from month to month, and becomes responsible for the rents at the rates mentioned in the lease. *Armstrong* v. *Bach*, 190

3 Where a lessee places the house containing his furniture in charge and possession of his servant, he will be considered as the occupant and possessor of the buildings and premises through his servant, and he is responsible to the lessor for the rent during the time that his servant is in possession. *Ib.*

4 Where a creditor has acquired a privilege on movable property, by virtue of a seizure under Art. 722 of the Code of Practice, it cannot be defeated by the subsequent rendition of a judgment against the debtor, or the registry after the seizure of another lien. This rule does not apply, where the property seized is affected in advance, with a special privilege or pledge in favor of a lessor upon goods on his premises at the time seizures are made. *Gleason & McManus* v. *Sheriff et al.*, 266

5 In a conflict for the proceeds of sales of property found upon leased premises, any legal evidence is admissible to prove the lessor's claim for rent, and, when proved, the lien attaches regardless of the action of other creditors against the property pledged. *Ib.*

6 Proof of occupation alone is insufficient to establish the relation of lessor and lessee. *Ib.*

7 Where a party made a lease of a house in New Orleans for the period of five years with his written consent that the lessee might renew the lease at its expiration for the same length of time, on the same

LANDLORD AND TENANT, *Continued.*

terms and conditions, and the sub-lessee, with the consent of the lessor, notifies him, the lessor, that he desires to renew the lease according to the agreement, the lessor cannot avoid a renewal of the lease, on the ground that his consent so to do was obtained through error or fraud. *Lieuteaud* v. *Jeanneaud & Cathalogne*, 327

8 Where a party leases a lot of ground in the city of New Orleans for the purpose of erecting a stable thereon to keep horses in, he has the right to remove temporarily the stone pavement therefrom, which is found to be injurious to the horses kept therein.
Bryan v. *French*, 366

9 If a lessee sublet the premises leased, in violation of a stipulation in the lease, the lessor may have the lease dissolved at his pleasure; and when the lease has been dissolved, the lessee is bound to return the premises to the lessor, and restore the pavement in the condition it was before removal, under penalty of damages. *Ib.*

10 Where the lessee abandons the premises leased, he becomes from that moment responsible for the whole amount of the rent due on the lease, and the lessor may relet the premises. In such a case, the amount of rent received will go to the credit of the first lessee.
Ledoux v. *Jones et al.*, 539

11 The lessor is not bound to enforce his privilege against the lessee before pursuing the sureties. *Ib.*

12 The failure of the lessor, to relet the premises after they have been abandoned by the lessee, will not discharge the sureties. *Ib.*

LAWS:

1 The form of citation and the manner in which parties may be brought into court are entirely within the legislative control.
Bond v. *Hiestand*, 139

2 The act of the Legislature, prescribing the form of proceedings for enforcing the collection of taxes due the city of New Orleans, by advertisements in the official newspaper, in lieu of a petition and citation is constitutional. *Ib.*

3 The act of the Legislature of 1859, relative to the collection of taxes in the city of New Orleans, is not repealed by the act of 1865, creating courts in the parish of Orleans. *Ib.*

4 The act of Congress of 17th July, 1862, entitled "an act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," was enacted in the interest of the government, and not for the benefit of those against whom its provisions are directed, and the nullity of transfers therein denounced relates to sales made to defeat the rights of the government. *Leggett* v. *Goodrich*, 165

5 Under the Constitution of 1864, the Legislature is prohibited from passing any law impairing the obligations of a contract.
D'Ile Roupe v. *Carradine et al.*, 244

6 The act of the Legislature of 1855, secs. 120 and 121, vesting the power in the Recorders of the City of New Orleans to try and sentence parties for minor offences against the law, is not in conflict with section 105 of the Constitution of 1864; under this law, which is still in force, a party may be tried before the recorder on the

LAWS, *Continued.*

charge of vagrancy, and, if found guilty, sentenced without indictment or information. *State, ex rel., Harris*, v. *Noble*, 325

7 A proclamation by the President of the United States, deriving its authority from an act of Congress, has, from its date, all the authority of positive law. *State* v. *Louisiana State Bank*, 468

8 A legislative body is competent to enact any legislation, not prohibited by the Constitution of the State or the United States. *State* v. *Volkman*, 585

9 The act of the Legislature, approved April 4, 1865, No. 55, entitled an act to provide for increasing the revenue of the State, and raise means to pay the interest on the State debt, does not violate the Constitution in levying a license tax on certain trades, professions and callings. *Ib.*

10 Under the Constitutions of 1864 and 1868, the Legislature has the power to levy a license tax on all persons pursuing any occupation, trade or calling, subject to the condition that it is uniform on all persons embraced in the levy. *Ib.*

11 This grant of power to the Legislature is independent of the power to levy an income tax on the amount of business done. *Ib.*

LEVEE COMMISSIONERS:

1 The Act of 1852, creating a Board of Levee Commissioners for the parishes of Carroll, Madison and Catahoula, allowed no compensation to parties who did work on the levee without the authority or sanction of the board. *Board of Levee Commissioners* v. *Harris*, 201

2 The act of the Legislature, approved February 17, 1866, confirming the Board of Levee Commissioners provisionally appointed by the Governor, did not confer on them the authority to sue for the State, nor to make the State a party in any judicial proceeding. *Ib.*

MANDAMUS:

1 Where a writ of *mandamus* has been issued against a District Judge, at the instance of the defendant in the case, ordering him to show cause why he should not be compelled to fix the amount of the bond for the release of property under sequestration, and the Judge shows for cause that the suit has been dismissed at the instance of the plaintiff, the application for a *mandamus* will be dismissed. *State, ex rel., Westbrook*, v. *Farrar*, 99

MARRIAGE:

1 The certificate of marriage is evidence of the particular facts which the law requires to be recorded in it, and of no others. *Succession of Hubee*, 97

2 A marriage is not null, because the laws relating to forms and ceremonies have not been been observed, and it may be proved by every species of evidence not prohibited by law, which does not presuppose a higher species of evidence within the power of the party. *Ib.*

3 The impediments contemplated by Art. 105 of the Civil Code, are those that would render the marriage a nullity. *State* v. *Dole et al.*, 378

4 Failure to obtain the consent of the parent to the marriage of a minor is only good cause to disinherit the minor. C. C. 114. *Ib.*

MARRIAGE, *Continued.*

5 The bond given, conditioned that no legal impediment exists to the marriage will not be forfeited, because one of the parties, a minor, failed to obtain the consent of the parent. *Ib.*

MARRIED WOMEN—*See Husband and Wife.*

MINORS:

1 By the act of the Legislature, approved March 15th, 1855, amending and re-enacting Art. 2294 of the Civil Code, it is provided that where a minor child has lost its life by any casualty resulting from the carelessness, negligence, or want of skill, of any person or company, the father may sue for and recover the damages done to the child. *Frank* v. *N. O. & C. R. R. Co.*, 25

SEE PARTNERSHIP—*Vogel* v. *Reichard et al.*, 549

MONITION:

1 A final judgment rendered in chambers in a monition suit is null. Section 32, Acts of 1855, No. 344, does not apply to such a case. *Ex parte Gay*, 176

MORTGAGES:

1 The legal mortgage accorded to a married woman on the real property of her husband, to secure the recovery of her paraphernal means, attaches, and has force and effect on property aquired by the husband after her means have come into his hands, from the date of the purchase by the husband. *Lombas* v. *Collet*, 79

2 The vendor's privilege is superior in rank to the mortgage of the wife on the property of her husband, but to make it available against the wife's mortgage, it must be recorded in the office of the Recorder of Mortgages, in the manner and within the time required by law. C. C. 3240, 3241. *Ib.*

3 The mortgage resulting from the recording of an act of sale of real estate, to the husband, is inferior in rank to the legal mortgage of the wife on the property of her husband, accorded by law for the restitution of her paraphernal estate. *Ib.*

4 Mortgages are *stricti juris*, and cannot be extended by implication to cover obligations other than those mentioned in the act. *Durrive et al.* v. *Key et al.* 155

5 Philip B. and Maria L. Key executed two acts of mortgage on real property in favor of Edward Durrive & Co., of the city of New Orleans, for the sum of thirty-two thousand dollars, in the aggregate, and authorizing said mortgagors to draw on the mortgagees from time to time, as they may require the same, with the understanding that the total amount of their indebtedness shall never exceed at any one time the sum of thirty-two thousand dollars, to be evidenced by the *account current of such advances*, to be kept by said firm. After the mortgage was executed, the mortgagors executed a large number of notes, to their own order, by them endorsed, which were delivered to Edward Durrive & Co. and by them endorsed and negotiated, and the net proceeds credited to Philip B. and Maria L. Key in the account current. These notes, which subsequently fell into the hands of third parties, plaintiffs in this cause now seek to make the property mortgaged subject to these notes. The last account current shows that the amount of the mortgage, $32,000, has been

MORTGAGES, *Continued.*

overdrawn independent of the notes: *Held*—That under this state of facts, Edward Durrive & Co. had no mortgage executed in their favor specially to secure the promissory notes thus executed by the mortgagors and could transfer none to the subsequent holders of the notes; that the holders of the notes have no mortgage on the property thus mortgaged to secure advances to the mortgagors, because it does not so specify that these notes are secured in the act of mortgage. *Ib.*

6 Where the debt has become extinguished by confusion, the mortgage given to secure it becomes extinguished also. There can be no mortgage to secure the payment of an extinguished debt.
Davidson v. *Carroll, Hoy & Co.* 199

7 A, having sold a tract of land to B, retained a mortgage thereon for the unpaid portion of the price, with the pact *de non alienando* in the act of sale. B, subsequently sold the same tract of land to C, without an assumption in the act of sale of the existing mortgage. A lost his mortgage by allowing ten years to elapse without reinscription: *Held*—That C, the third purchaser, held the property free from the mortgage of A, after the lapse of ten years from its inscription, notwithstanding the pact *de non alienando* contained in the act of sale from A to B, and that the third purchaser could successfully enjoin the order of seizure and sale taken out by A.
Delony v. *George et al.* 216

8 Inscription in the office of the Recorder of Mortgages ceases to be evidence of a mortgage after the lapse of ten years, and it is not subject to the rules of prescription. *Kohn et al.* v. *McHatton*, 223

9 The act of the Legislature of 1865, exempting 160 acres of land from seizure and sale under execution, entitled the homestead act, does not apply where a mortgage was executed on the land prior to the passage of the law; in such a case the land may be seized and sold to pay the mortgage, notwithstanding this law exempts it from seizure and sale. *Roupe* v. *Carradine*, 244

10 An order of seizure and sale on a mortgage note interrupts prescription, when notice has been given to the maker. *Ib.*

11 A mortgage, executed to secure the payment of a promissory note, having been cancelled and erased by authority of the holder, will not be revived in favor of a subsequent holder of the note.
Doll v. *Rizotti*, 263

12 Where an estate does not sell for an amount sufficient to pay the mortgages resting upon it the privileges must be paid by the mortgage which is least ancient, and so ascending, according to the order of the mortgages, or by *pro rata* contributions when two or more mortgages have the same date. C. C. 3236.
Ventress v. *His Creditors*, 359

13 A mortgage creditor, on paying the mortgage which precedes his, becomes subrogated by law to the mortgage rights of the creditor whose debt he has paid. *Ib.*

14 Where the holder of a claim, secured by mortgage, assigns a part of it, he cannot be permitted to come in competition with his assignee, if the property mortgaged is insufficient to pay both. *Ib.*

MORTGAGES, *Continued.*

15 A party, having a mortgage importing a confession of judgment, may proceed *via executiva* although the mortgagor may have died subsequently, and his succession have been accepted with benefit of inventory. *Lavillebeuvre et al.* v. *Heirs of Frederic & Cosse*, 374

16 The act of 1865 exempting property from seizure and sale, does not apply to property mortgaged before the passage of the act. *Ib.*

17 Where a mortgage was executed on land and slaves, while the relation of slavery was recognized by law, the subsequent abolition of slavery and the destruction of property in slaves did not annul the mortgage; it is still in force on the land. *Ib.*

18 The mere recital of a primarily existing mortgage is insufficient to supply the want of reinscription of such mortgage.
Batey et al. v. *Woolfolk et al.*, 385

19 One of the essential requisites of an act of reinscription of a mortgage is, that the reciting act must contain a clear and definite description of the property mortgaged. *Ib.*

20 The reinscription of a mortgage must be made before the expiration of ten years, reckoning from its date as between the parties, and from the time of inscription as to third persons. C. C. 3333. *Ib.*

21 The reinscription of a mortgage dispenses with the examination beyond the period of ten years preceding. *Ib.*

22 The renewal of the registry of a mortgage, after the lapse of ten years from the date of first inscription, will not affect an ordinary third possessor or subsequent mortgagee, but its omission cannot avail a subsequent purchaser who has assumed the mortgages in the act of sale. *Ib.*

23 The hypothecary action to enforce the rights of mortgage on property, is not prescribed by the lapse of ten years; it may be exercised at any time while the mortgage is in existence.
Gentes v. *Blasco*, 403

24 The erasure and cancellation of a mortgage on the record, by the recorder, will not bind the mortgagee where it has been done without his knowledge or consent, and he may enforce his mortgage rights against the property mortgaged even after it has passed into third hands in good faith. *St. Romes* v. *Blanc et al.*, 424

25 The inscription of a mortgage ceases to be evidence against all parties bound by it after the lapse of ten years from the date of inscription.
Brown v. *Johnson*, 486

26 An inscription, in the office of the Recorder of Mortgages, ceases to be evidence of the mortgage after the lapse of ten years.
Britton & Koontz v. *Norment et al.*, 508

27 The Recorder of Mortgages is bound to cancel and erase a mortgage, on the application of a creditor or party interested, that has been registered in his office ten years previous to the application. R. S.—page 81. *Ib.*

28 A tacit mortgage in favor of a minor only attaches where the funds or property are received in the capacity of tutor.
Heirs of Woolfolk v. *Woolfolk*, 513

29 A tacit mortgage does not exist in favor of the heirs against the property of the executor of the estate. *Ib.*

MORTGAGES, *Continued.*

30 A mortgage creditor of the executrix, not a party to the suit, may appeal from a judgment against the executor recognizing a tacit mortgage in favor of the heirs. *Ib.*

See Husband and Wife—*Wallace* v. *McCullough*, 301
" Jurisdiction—*State, ex rel., Sauvé*, 311
" Prescription—*Aillot* v. *Aubert*, 509
" Privilege—*Jamison et al.* v. *Barelli*, 452

NEW ORLEANS:

1 The city of New Orleans, by taking charge and control of the wharfs and landings in front of the city and charging and collecting wharfage, assumed the obligation of providing and keeping in repair good and safe wharfs for the landing of goods, and it is responsible in damages for the loss of freight while being discharged from the ship, occasioned by the defectiveness or bad condition of the wharf. *Fennimore* v. *New Orleans*, 124

2 The city of New Orleans, in her corporate capacity, must be regarded and treated as an individual person, and when she enters into a contract with a third party through her officers by authority of an ordinance of the Common Council, the city is not at liberty to annul the contract so made by an ordinance repealing the one authorizing the contract; having made the law she is bound by it. *State, ex rel., Bermudez*, v. *New Orleans*, 172

3 City ordinance No. 708, contracting with E. Bermudez, an attorney-at-law, who was at the time assistant city attorney, to collect all bills for taxes assessed on property as unknown, and all unsatisfied judgments in favor of the city for taxes, does not violate the city charter nor does it conflict with any of the rights of the assistant city attorney. *Ib.*

4 The duties involved in this contract do not embrace any of the duties, or include any of the emoluments of the office of assistant city attorney. *Ib.*

5 The right of the city to employ an attorney-at-law conversant with city affairs, to facilitate the collection of debts due her, is unquestionable, when in so doing she does not infringe on any of the rights of her officers. *Ib.*

6 The city of New Orleans is liable for the damages done to property by mobs in riotous assemblies. Act of the Legislature, approved 9th of March, 1855. *Fauvia* v. *New Orleans*, 410

7 Where a party brings suit against the city for damages done to his property by a mob of rioters, it is incumbent on him to render his claim certain by legal evidence. *Ib.*

See Expropriation—*New Orleans, Praying for Opening of Streets*, 497
" Injunction—*Wells* v. *New Orleans*, 226
" Laws—*Bond* v. *Hiestand*, 139
" Office and Officers—*State, ex rel. Staes* v. *Gastinel*, 114

NEW TRIAL:

1 A party has a right to move for a new trial within three judicial days from the rendering of the judgment, notwithstanding the judgment

NEW TRIAL, *Continued.*

may have been previously signed; provided, the court has not adjourned before the expiration of the three days.
McWillie v. *Perkins*, 168

NOTARY PUBLIC:

1 There is no authority given by law to a notary public, before whom an act of sale is to be passed, to receive moneys or checks from one party to deliver to another. Such acts form no part of his duties as notary. *Monrose* v. *Brocard et al.*, 78

2 The surety on a notary's bond for the faithful performance of his duty as such, is only bound for such acts as the law authorizes or requires him to do in his official capacity. *Ib.*

OBLIGATIONS:

1 The Common Council of the city of New Orleans is not vested with authority to guarantee that contractors shall make money, under all circumstances, out of contracts with the corporation. *Per Curiam:* No such use of the public funds is contemplated.
Patterson v. *New Orleans*, 103

2 Where one of two innocent parties must suffer loss or inconvenience, it should fall on the party who induced it.
Lieutaud v. *Jeanneaud & Cathalogne*, 327

3 Payment of dividends of stock to a person not authorized to receive it, will not protect the company from again paying it to the owner.
St. Romes v. *Levee Steam Cotton Press*, 381

4 A made a contract with B to make a cotton press, and paid him the price agreed upon in advance; B made the press, and pointed it out to A in his foundry as his property; A afterwards sent for the press, and was informed that B had sold and delivered it to a third party; A then brought suit for the price he had paid, which B resisted, on the ground that it was a suit to rescind the contract, and he had not been put in default according to Art. 1905 of the C. C.: *Held*—That B, by his own act, having put it out of his power to deliver the press, could not avail himself of the plea of default: *Held*—Further, that B was bound to return the price which he had received, with interest, to A. *Robinson* v. *Clark*, 384

5 Where a party purchased a lot of ground in the city of New Orleans, containing so many feet in width and depth, according to a plan furnished at the time, and the notary who passed the act of sale made a clerical error in the number of feet in depth, making the lot larger than that shown by the plan, the purchaser is not entitled to a diminution of the price. *Wurzburger* v. *Meric*, 415

6 Suit cannot be brought to enforce a conditional obligation, until the condition has been fulfilled. *Thompson & Co. et al.* v. *Moulton*, 535

7 Where suit has been brought on a conditional obligation, and the evidence discloses the fact that the condition has not been complied with, a judgment of nonsuit should be rendered against the plaintiff. *Ib.*

8 A hired his teams to B, to transport a lot of goods from Franklin to Newtown, in this State, at a fixed price, which was paid, and the teams to be immediately returned to Franklin. On arriving at Newtown, B directed that the teams should go to Alexandria, on Red

OBLIGATIONS, *Continued.*

River. On this trip from Newtown to Alexandria, the teams and wagons were lost, and never returned to the owner: *Held*—That B, having violated the contract of hire, in not returning the wagons and teams to the owner on their arrival at Newtown, he became responsible for their value. *Murphy* v. *Kaufman*, 559

OFFICE AND OFFICERS:

1 Section 130 of the city charter of the New Orleans provides that the right of the Mayor, or any other officer of the city of New Orleans, *to fill the office held by him* may be tested *at any time* by any citizen, by a writ of *quo warranto*, which shall be tried in a summary manner, both in the inferior and appellate courts.

State, ex rel., Staes, v. *Gastinel*, 114

2 Where an officer is ineligible from any cause, he cannot take charge of and perform the duties of the office to which he has been elected or appointed. *Ib.*

PARTNERSHIP:

1 Where a commercial firm is sued on a note drawn by the company after the dissolution of the firm, citation served on the agent of one of the partners, is not sufficient to bring the firm into court, although it be made at the former place of business of the firm.

Michie v. *Brown & Co. et al.* 75

2 The correct rule to govern in the settlement of a partnership account it to ascertain what each partner has contributed, and make them equal in this respect, and divide the balance of the proceeds.

Frigerio v. *Crottes*, 351

3 Commercial partners, having come into possession of property belonging to the minor heir of a former partner, have no legal right to administer it for the benefit of the minor. By undertaking the administration, on the part of the firm, without authorization, of the minor's interest, they create the relation of creditor and debtor, and, being commercial partners, they are bound *in solido.*

Vogel v. *Reichard et al.* 549

4 Where the evidence shows that two parties are engaged in a commercial business as partners, and debts have been contracted by the firm, they are bound *in solido.* *Gumbel* v. *Abrams et al.* 568

PLEADINGS;

1 Amendments to pleadings may be made after issue joined, and where one of the parties has answered the other has the right to answer the amendment. The answer must be made immediately, unless its nature requires further time. *Estlin* v. *Ryder*, 251

2 Where an amendment has been allowed after issue joined, it is not necessary to render a default to make a tacit issue on the amendment. The amendment forms a part of the pleadings, and the demand is precisely what it would have been had the original and amended petition been filed at the same time. *Ib.*

SEE PRACTICE—*Stilley* v. *Stilley*, 53

" " *Lea* v. *Terry*, 428

PLEDGE OR PAWN:

1 A party taking collaterals in pledge for a loan has the option to return the articles pledged on payment of the loan and interest, or pay their value to the owner. *Johnson* v. *Succession of Robins*, 569

POSSESSION:

1 Where a party gains possession of property in dispute, by the unlawful use of force, such possession will not avail him.
O'Donnell v. *Burbridge*, 37

2 A party claiming the right to control property by virtue of possession, must show that he acquired possession in a lawful manner, or by delivery from the party having the rightful custody of it. *Ib.*

PRACTICE:

1 The plea of payment relates to transactions between plaintiff and defendant, and exclusively to sums paid by the latter to the former in discharge or in part payment of the plaintiff's demand.
Blum v. *Bi iwell & Reddington*, 43

2 Where a peremptory exception has been ordered by the Court to stand as an answer, with leave to amend, the defendant by filing an amended answer, will be considered as treating the peremptory exception as an answer to the merits. *Stilley* v. *Stilley*, 53

3 Where the supplemental and amended answer changes the substance of the original answer, it will be stricken out on motion of plaintiff. C. P. 420. *Ib.*

4 Where the answer of defendant puts the capacity of plaintiff specially at issue, the plaintiff is bound to prove it to maintain his action. *Ib.*

5 Where it appears that the counsel for plaintiff mistook the law, the Court will, in the exercise of a sound legal discretion, render *judgment of nonsuit.* *Ib.*

6 A defendant cannot be forced to answer until he is informed with reasonable certainty of the notice of the demand brought against him. *Hyland* v. *Rice*, 65

7 A judgment founded on a defective citation, is null and void.
Michie v. *Brown & Co. et al.* 75

8 Where a judgment of the lower Court has been declared null on appeal, on the ground of defective citation, the case will be remanded at the cost of the appellee. *Ib.*

9 Where a party appears in Court by way of opposition to the homologation of an administrator's account, he thereby waives citation, and the Court is authorized to render judgment against him in the capacity in which he appears as opponent. *Succession of Perret*, 86

10 Where no opposition has been made to a particular item of an administrator's account in the lower Court, it will not be noticed if made on appeal. *Ib.*

11 Where the record discloses the fact that a judgment by default has been confirmed, without introducing the evidence on which it is founded, although it is on file in the case, the judgment will be declared null and void on appeal and the case will be remanded to be proceeded in according to law. *Gubernator* v. *New Orleans*, 106

12 A bill of exceptions taken to the admission of testimony should state the ground of objections, otherwise it cannot be noticed, as the Court cannot supply it. *Picken* v. *Preston*, 138

13 Where the defendant, sued as endorser on a promissory note, propounds interrogatories to plaintiff, a non-resident, on facts and articles, the law requires that they must be answered under a com-

PRACTICE, *Continued.*

mission, and if the plaintiff make answers responsive to the questions asked, without a commission, they will be excluded on trial. *Kirtland* v. *Harris*, 153

14 Where a commission has issued according to law to take the answers of plaintiff, a non-resident, to interrogatories, and it is not shown that sufficient time has not elapsed for the return of the commission, the fact that it is not returned is not good ground for a continuance of the cause. *Ib.*

15 The character of an action is determined by the prayer of the petition for judgment. *Edwards* v. *Ballard*, 169

16 The action *en declaration de simulation* is one of revendication, and has for its object to have the contract declared judicially a simulation and nullity. *Ib.*

17 An intervenor cannot contest the right of plaintiff to bring the suit, or stand in judgment; he must take the suit as he finds it. *Cordill* v. *Succession of McCullough*, 174

18 An exception to the right of action must be made in the lower court. It will not be noticed if made for the first time in the appellate court, in the briefs of counsel. *Ib.*

19 The commencement of proceeding for the forfeiture of the charter of an incorporated company by one party, in one of the District Courts of New Orleans, does not divest the other District Courts of jurisdiction in similar proceedings by other parties. *State* v. *Judge Fourth District Court*, 177

20 A writ of prohibition will not lie to prohibt the Judge of an inferior court from proceeding futher in the cause where it is shown that he is vested with jurisdiction over the case. *Ib.*

21 Instead of moving the court to strike out any portion of a defendant's answer, the more regular course is, to object to the admission of any evidence to sustain it. *Lallande* v. *Ball*, 193

22 Where the defendant has made no appearance in the lower court, he may enter the plea of prescription in the Supreme Court; but he must do it by filing the plea: a suggestion of the plea in the brief will not be noticed. *Chase* v. *Davis*, 201

23 Where a party complains of errors of calculation, he must point out the item in which the error is found, otherwise it will not be noticed on appeal. *Lee* v. *Trahan*, 202

24 Where it is manifest that the District Court is without jurisdiction, a writ of prohibition may issue from the Supreme Court restraining the Judge from acting in the cause. *State ex rel., Michond* v. *Judge Fourth District Court*, 239

25 Where the allegation in the petition show a *prima facie* case of jurisdiction, the Supreme Court will not issue a writ of prohibition on application of the defendant that the court is without jurisdiction. *Ib.*

26 A party who, without opposition, suffers evidence to be adduced contrary to or beyond the allegations contained in the pleadings, is bound by its effect. *Hennen* v. *Gilman*, 241.

27 It is unnecessary to bring suit to annul that which the law declares can have no effect. *Ib.*

PRACTICE, *Continued.*

28 A obtained an order of seizure and sale on mortgaged notes which on motion of B was set aside on the ground that the property mortgaged was inventoried as succession property. A took a supensive appeal from the judgment of the Court making the rule absolute. The Judge of the court afterwards granted an order of sale of the same property, on application of the executrix to pay the debts of the succession. A applies to the Supreme Court for a writ of prohibition against the Judge, on the ground that the sale of the property cannot be affected while the appeal is pending: *Held*—That it not appearing that the Judge is transcending his jurisdiction, in the mortuary proceedings, nor is he taking any steps in the case in which he granted an appeal that will affect the jurisdiction of the appellate court, the writ of prohibition will not be granted.
State, ex rel., Sarrat & Co., v. *Judge Second District Court*, 252.

29 Where an intervention has been filed before or after issue joined, time must be allowed to cite the party against whom it is directed, and the same delays to answer, etc. *Perkins* v. *Perkins*, 257

30 A purchaser of property, at probate sale, may be compelled by rule to comply with the terms of his bid, he can, however, set up in defence of the rule, any defect of title in his vendor, or show any outstanding title in a third party. *Succession of Armat*, 340

31 Where suit has been brought and after issue joined the defendant dies, it may be revived against his heirs and legal representatives.
Lanata v. *Macera*, 426

32 Courts have the prower, in their discretion, to determine whether a paper filed in a suit styled a peremptory exception shall be considered as an answer to the merits. *Lea* v. *Terry*, 428

33 Where the answer of the defendant puts the capacity of plaintiff specially at issue, by denying that in the capacity in which he sues he has any interest in the suit, the plaintiff is bound to prove it to maintain his action. See the case of Stilly v. Stilly, p. 53. *Ib.*

34 The verdict of the jury, where none but questions of fact are involved, is entitled to weight. *Golding* v. *Steamer America*, 455

35 Where the appellate court amends the judgment of the lower court, by reducing the amount for which judgment has been given, it will, in its discretion, render judgment of nonsuit for the amount of reduction. *Ib.*

36 Failure of the sheriff to summon witnesses, is not good ground for a continuance, where it is shown that the party failed to give the proper directions. *Golding* v. *Steamer Castro et al.*, 458

37 Where a rule has been continued indefinitely by the District Judge, and afterwards fixed for trial on motion of the party in whose favor it is taken, the party against whom the rule has been taken, must be notified of such fixing for trial.
Hennen v. *N. O. Carrollton R. R. Co.*, 544

38 Where a judgment by default has been confirmed without sufficient evidence, if admissible, to authorize the judgment, the case will be remanded. *Pike* v. *State of Louisiana*, 547

PRACTICE, *Continued.*

39 To make the exception of want of amicable demand available as to costs, the defendant must show a readiness to comply.
Nelligan & Von Zinken v. *Musbach*, 547

SEE JUDGMENT—*Yorke* v. *Allen*, 237

SEE JUDGMENT—*Converse, Harding & Co.* v. *Bloom, Kahn & Co.*, 555

PRE-EMPTION:

1 The approval by the Land Department of the lands that have been selected by the State, passes the title thereto in fee-simple, subject to any equitable rights that may exist at the time of the approval to any portion of the lands transferred. *Ludeling* v. *Vester*, 433

2 The issuing of a patent by the United States to lands which have been previously donated to the State and approved by the Secretary of the Interior, does not, *ipso facto*, annul the patent previously issued by the State to the same lands. *Ib.*

3 A party claiming pre-emption rights under the pre-emption laws of the United States, is required to establish his rights within the time fixed by law, and a failure to do so will operate a forfeiture of them. *Ib.*

4 Under the pre-emption act of Congress of 1841, a party forfeits his claim to a pre-emption, if he fails to establish it before the public land sales occur. *Ib.*

PRESCRIPTION:

1 Where a servitude is once established on property, it takes ten consecutive years of non-use by the party in whose favor it is established, to entitle the party on whom it is imposed to prescribe against the right. C. C. 3511. *Baker* v. *Pena*, 52

2 A recognition of the right of servitude by the party owing it will interrupt prescription, which only begins to run again from that date, and must continue for ten years from the date of the interruption before it is prescribed. C. C. 800, 3486. *Ib.*

3 Prescription does not run on a commission merchant's account, consisting entirely of paid acceptances and promissory notes, with commissions and interest added upon each separate item of the account, but the account as a whole is prescribed in three years. Statute of 1852, p. 90. 14 A. 705. *James* v. *Fellowes*, 116

4 Where a commission merchant's account has been rendered, showing that a balance has been struck between the parties, and an acknowledgment by the debtor of its correctness, though made verbally, it becomes from that moment a closed account, and is a personal debt between the parties, prescribed only by the lapse of ten years from the date of the acknowledgment. *(On Rehearing.)* *Ib.*

5 The maxim *contra non valentem agere non currit præscriptio*, is an axiom or first principle of natural law, and notwithstanding the terms of limitations in prescriptions contained in the old, as well as the new Civil Code, they have always been construed so as to harmonize with this maxim of universal justice. *Rabel* v. *Pourciau*, 131

6 Where a bill of exchange or promissory note has been suffered to prescribe, and the evidence shows that the holder could have brought suit before prescription obtained, he cannot invoke the maxim *contra*

PRESCRIPTION, *Continued.*

non valentem agere non currit præscriptio, to relieve it from the effect of prescription. This maxim has no application to the prescription of bills and notes, where suit might have been brought before prescription obtained. *Ib.*

7 An action in damages for a tort, in taking and appropriating the personal goods of another, is prescribed by the lapse of one year from the commission of the offence. *Williams* v. *Greiner*, 151

8 An action to recover the price of property sold, where the vendor alleges that the sale was a simulation, is one sounding in damages, and is prescribed against by the lapse of one year. C. C. 3501. *Edwards* v. *Ballard*, 160

9 No prescription lies against the United States. *Ib.*

10 Proceedings on an order of seizure and sale, which are litigated by the defendant, suspend prescription. *Walker & Co.* v. *Lee et al.* 192

11 An action in damages resulting from a quasi-offence, is prescribed by the lapse of one year. C. C. 3501. *Jennings* v. *Gosselin*, 214

12 Where the holder of a promissory note has failed to bring suit until after prescription has obtained, and the evidence shows that he might have brought suit at any time for several months previous, the plea will be maintained. 20 A. p. 131. *Durbin* v. *Spiller*, 219

13 The question of prescription, and of the interruption of prescription, cannot be considered on an application for an order of seizure and sale. The doctrine in the case of Perroux v. Lacoste, 19 A. p. 266, reaffirmed. *Gill et al.* v. *Hosmer*, 219

14 Where the evidence shows that a river has been navigated by steamboats for a considerable length of time, it will be considered as a public highway, and the plea of prescription will not avail in favor of those seeking to obstruct the navigation. *Ingram* v. *Police Jury*, 226

15 The action of a creditor of the husband, to annul a judgment of separation of property between the husband and wife, and set aside the sale made by the sheriff on a writ of *fieri facias* of the husband's property to the wife in payment of her judgment, is prescribed by the lapse of one year from the date of the judgment, and sale of the property under it. *Weil* v. *Brand & Adams et al.*, 147

16 Where promissory notes are prescribed on their face, the plea of prescription must prevail, notwithstanding it is shown that the holder was prevented from bringing suit for several years on account of the late war, unless it is shown that suit could not have been brought at the time or prior to the time that prescription was acquired. The doctrine in the case of Rabel v. Pourciau, ante page 131, reaffirmed. *Payne & Harrison* v. *Douglass*, 280

17 The action for the recovery of personal property is prescribed by the lapse of three years, when the possessor holds by a just title, in good faith, unless the thing is shown to have been stolen or lost. C. C. 3472. *Hayes* v. *Hayman*, 336

18 Where a survey by the parish surveyor has been made, and a boundary line established thereby, and one party is suffered to occupy up to the line for more than ten years, the action by the other party to have the line corrected is prescribed. C.C.849. *Bisso* v. *Calvo*, 343

PRESCRIPTION, *Continued.*

19 A promissory note is prescribed in five years from its maturity. C. C. 3505. *Durand* v. *Hienn*, 345

20 To avoid the effect of the plea of prescription of a promissory note, the holder must show that the law has been suspended. *Ib.*

21 Prescription only begins to run against a dividend, declared by a company in favor of a stockolder, from the period at which he became aware of his right to claim it.
St. Romes v. *Levee Steam Cotton Press*, 381

22 Where the evidence shows that more than fifteen months elapsed after the maturity of a promissory note, before any impediment arose to the institution of the suit, the plea of prescription will prevail. *Barriere & Brother* v. *Stein*, 397

23 Where a promissory note is prescribed on its face, and the evidence shows that suit might have been brought before prescription obtained, the holder cannot invoke the maxim *contra non valentem agere non currit præscriptio* to defeat the plea. 20 A. p. 131.
Marcy v. *Steele*, 413

24 Where the evidence shows that the holder of a promissory note might have brought suit previous to the date at which it was prescribed but failed to do so, the plea of prescription will be maintained. See the case of Rabel v. Pourciau, (ante page 131.)
Norwood v. *Mills et al.* 422

25 To show the interruption of prescription by a partial payment, proof must be made of the payment, and the date when it was made.
Gordon v. *Schmidt*, 427

26 Where the holder of a promissory note has suffered it to prescribe, and the evidence shows no impediment to the institution of suit at the time prescription obtained, he cannot invoke the maxim *contra non valentem agere non currit præscriptio* to relieve him from its effect. See the case of Rabel v. Pourciau, ante, page 131.
Lemon v. *West*, 427

27 The payment by the maker of a part of a series of notes, forming the same indebtedness after prescription has obtained, will not work an interruption of prescription as to the others.
Brown v *Johnson*, 486

28 To interrupt prescription on a promissory note, some acknowledgment of the debt evidenced by it is required. *Ib.*

29 The action of the minor against his tutor, respecting the acts of the tutorship, is prescribed by the lapse of four years to date from his majority, and the tacit mortgage given by law against the property of the tutor, is extinguished by the same length of time.
Aillot v. *Aubert*, 509

30 The plea of prescription is special, and will not be supplied or enlarged upon by the Court. *Ib.*

31 Where a promissory note is prescribed on its face, and nothing is shown in the record either suspending or interrupting prescription, the plea will be maintained. *Watts* v. *Bradley*, 523

32 The Judge cannot take notice of the fact that the note is prescribed in granting an order of seizure and sale; the plea must be made by the defendant. 19 An. 266. *Ib.*

PRESCRIPTION, *Continued.*

33 The burden of proof, falls upon the holder of a promissory note, to show a state of facts that will defeat the plea of prescription.
Schlenker v. *Taliaferro*, 565

34 The maxim, *contra non valentem agere non currit præscriptio*, cannot be invoked by the holder of a promissory note to defeat the plea of prescription, where suit might have been brought before it was acquired. (Ante page 131.) *Ib.*

SEE DAMAGES—*Lallande* v. *Ball*, 193
" MORTGAGES—*Roupe* v. *Carradine et al.* 244
" PRACTICE—*Chase* v. *Davis*, 201
" SALE—*Murphy* v. *Gutierez*, 407

PRIVILEGE:

1 A party employed as foreman in a job printing office has no privilege on the job material to secure his wages. *Lewis* v. *Patterson*, 294

2 No privilege exists in favor of the holder of a promissory note. *Ib.*

3 Under Art. 3235, C. C., the holder of the vendor's mortgage on land, cannot claim to be paid in full out of the proceeds of the sale of the land and buildings erected thereon subsequent to the sale of the land to the exclusion of those forming the builder's lien.
Jamison et al. v. *Barelli*, 452

4 Old buildings, sold to the contractor for the erection of new buildings, and taken by him as part of the price, and used by him in their construction, cease to be immovables, and the lien upon them in favor of the vendor of the land, becomes extinguished. *Ib.*

5 The recording of contracts is not governed by date of registry, as mortgages are. The several contracts, for the construction of different portions of the same building, have a concurrent lien without regard to their execution or date of registry. C. C. 3239. *Ib.*

6 Where a separate appraisement of land and buildings is had, the expenses of the sale, appraisement, taxes, and each like privilege debts on the property sold under execution, must be paid out of the proceeds of the land and buildings, in proportion to their respective appraisements. *Ib.*

7 To preserve the privilege of an architect or builder against third persons for work done, materials and machinery sold, etc., for the erection of a sugar-house, sugar-mill, and saw-mill, he must have the contract or act duly recorded in the office of the recorder of mortgages within six days of the date, if the act has been passed in the place where the office of mortgages is kept, adding one day for every two leagues from the place where the act was passed to the office. C. C. 3240 *Kohn et al.* v. *McHatton*, 485

8 The vendor's privilege on movables, can only be enforced while the goods are in the possession of the vendee, except in case of a special privilege granted by statute. *Elkin* v. *Harvy*, 545

9 The vendor's lien on movable property only continues so long as the property is in the possession of the vendee.
Flint and Jones v. *Rawlings*, 557

10 The vendor loses his lien on movable property by the sale, and delivery to a third person by the vendee. *Ib.*

PRIVILEGE, *Continued.*

11 A sale of personal property, by the vendee without actual delivery, will not defeat the vendor's lien. *Ib.*

SEE LANDLORD AND TENANT—*Gleason & McManus*, v. *Sheriff et al.* 266

" MORTGAGES—*Lombas* v. *Collet*, 79

" " *Ventress* v. *His Creditors*, 359

PROHIBITION:

1 A writ of prohibition will not issue from the Supreme Court restraining the Judge of the District Court from executing a judgment which he has rendered, unless it is shown that he is incompetent *ratione materiæ* to proceed in the case. *State, ex rel. Sauvé*, 311

SEE PRACTICE—*State* v. *Judge Fourth District Court*, 177

" " *State, ex rel., Michond*, 239

" " *State, ex rel., Sarrat & Co.* 252

RAILROADS:

1 At all elections for directors of the New Orleans, Jackson and Great Northern Railroad Company, the State of Louisiana and the City of New Orleans have the right to one vote for each share of stock which they or either of them have in said road.

State v. *N. O. Jackson and G. N. R. R.* 489

2 Where the votes of the City of New Orleans and the State of Louisiana have not been counted at an election, held for directors of the New Orleans, Jackson and Great Northern Railroad Company, the election is null and void. *Ib.*

3 The State, being a stockholder in the New Orleans, Jackson and Great Northern Railroad Company, has the legal right to question before the courts the legality of any election for directors. *Ib.*

SEE TAXES AND TAX SALES—*Gordon* v. *Police Jury*, 334

RECONSTRUCTION:

1 Under the acts of Congress of March 2d and March 23, 1867, commonly called reconstruction acts. The military commanders of the several military districts were clothed with full power to modify and control the action of State and municipal officers in their respective district. *State, ex, rel. O'Hara*, 518

2 The order of General Sheridan while in comand in Louisiana, under the reconstruction laws, annulling the contract between J. J. O'Hara and the city of New Orleans, was a legitimate exercise of his power under the law. *Ib.*

3 A writ of *mandamus* will not lie to compel the Mayor of the city of New Orleans, to sign a contract that has been annulled and revoked by competent authority.

RES JUDICATA:

1 Where a party sets up by way of exceptions the plea of *res judicata*, the former judgment on which the plea is founded, must be for the same cause of action and between the same parties.

Peters et al. v. *Fralinghouse et al.* 85

2 Where the evidence shows that suit has been brought, and judgment rendered on the same instrument between *other parties*, the plea of *res judicata* will not be maintained. *Wells* v. *Coyle*, 396

RECORDERS OF NEW ORLEANS:

1 Article 133 of the Constitution of 1864, conferring on the Recorders of the City of New Orleans the additional powers and functions of justice of the peace, does not vest the recorders with any other character or title of office than that of recorder.
State, ex rel., Staes, v. *Gastinel*, 114

2 The fact that a recorder of the City of New Orleans has been commissioned and sworn, does not protect him against the inquiry into his right to hold the office; nor does it confine the investigation to his right to *enter* upon the duties of the office. *Ib.*

3 The divesting of a Recorder of the City of New Orleans of his office, on the ground that he is ineligible to hold the same does not, *ipso facto*, give the office to his competitor at the election; in such a case it is made the duty of the Common Council by joint action of both boards to fill the vacancy. City Charter, sec. 15. *Ib.*

SALE:

1 Where a sale has been made of real estate in due form, and the price stipulated is shown to have been paid, the property passes to the purchaser, and cannot be seized and sold by the judgment creditor of the vendor, nor can the sale be declared null under an allegation that the sale is simulated; the remedy in such cases is by direct action for fraud. *Collins* v. *Shaffer et al.*, 11

2 A party purchasing real estate with a servitude imposed and acknowledged by his vendor, takes the property subject to the servitude, and cannot prevent the use and benefit of the servitude by the party in whose favor it has been established, on the ground that he never consented to it. *Baker* v. *Pena*, 52

3 The vendee acquires no greater rights or privileges over property which he purchases than his vendor had. *Ib.*

4 The doctrine is well settled, that a party taking a pledge in writing with authority to sell the thing pledged, is limited in his authority to sell the articles mentioned in the act of pledge; but where the evidence shows that he has authority to sell all the materials in a certain building, which contains the articles he has in pledge, mixed with others belonging to the pledgor, the sale is valid and binding.
Clark & Brisbin v. *Bouvain & Lewis*, 70

5 Where a contract of sale of a lot of cotton is made by weight, the cotton is at the risk of the seller until it is weighed; but the vendor is competent to waive the risk, and fix it on himself from the date of the purchase. P. H. Goodwyn v. J. Prichard, 10 A. 249.
Kelham & Co. v. *Carroll, Hoy & Co.*, 111

6 In a contract of sale of a lot of cotton appears the following clause: "The cotton to remain on the plantation at the risk of the purchasers until called for by them:" *Held*—That this clause shows that it was the intention of the contracting parties that the risks, which, under Article 2433 of the Civil Code, would have attached to the seller until the cotton was weighed, should be borne by the purchasers from the moment of the sale. *Ib.*

7 Delivery of the thing ceded is essential to complete a contract of *dation en paiement*, and in the sale or transfer of debts, or claims upon a third person, notice must be given to the debtor that the transfer has been made. *White* v. *Bird*, 282

SALE, *Continued.*

8 Where a merchant in New Orleans purchased a lot of cotton, at a fixed price, which was in a warehouse in Texas, and took the receipt of the warehouse for the number of bales purchased, all the risk falls on the purchaser from that moment, and the vendor is not responsible for the loss of the cotton from the date at which the purchaser came in possession of the warehouse receipts.
Nusbaum & Brother v. *Marks & Co.*, 379

9 Where a party advertises for the purchase of cotton in the name of a well-known commercial firm, and proclaims himself a member thereof, the presumption is that all cotton purchased by him as such is for the benefit of the firm. *Hamilton* v. *Eimer & Co.*, 391

10 Where a number of bales of cotton has been purchased, to be paid for at a fixed rate per pound on delivery, the risk falls on the purchaser from the moment of the delivery of the bales at the place agreed upon. *Ib.*

11 Where the seller has knowledge of the vice in the thing sold, and fails to declare it to the purchaser, the action of redhibition is not prescribed by the lapse of twelve months from the date of the sale. In such a case the maxim, *contra non valentem agere non currit præscriptio*, is properly invoked. *Murphy* v. *Gutierez*, 407

12 An act of sale under private signature has no date, except that at which it is offered in evidence without proof thereof *de hors* the act.
Bushnel v. *City National Bank*, 464

13 The seizure and sale by the constable, under writs of *fieri facias* placed in his hands by the justice of the peace, of the property of a person not a party to the suit or suits is null, and he may compel the justice of the peace and constable to restore his property thus illegally seized and sold, or pay him the value thereof in money.
Terrail v. *Tinney et al.*, 444

SEIZURE AND SALE—SEE SALE:

SEQUESTRATION:

1 Where property has been seized by the sheriff under a writ of sequestration, the defendant has the right to execute his bond, and have the property released, provided he does so within ten days from the date of the seizure. After the ten days have expired, the plaintiff may bond the property sequestered, provided the defendant has not done so within the ten days. C. P. 279. *Duperier* v. *Flanders*, 29

2 The law as it now stands, contemplates only two parties who have the right to bond property seized under a writ of sequestration; first, the defendant; and secondly, the plaintiff, after the lapse of ten days from the date of the seizure. *Ib.*

SHERIFFS:

1 Where furniture of a hotel has been provisionally seized by the landlord in a suit for rent, and he consents that the sheriff allow it to be used by the defendant until the sale: *Held*—That the defendant is not responsible for any portion of the furniture stolen between the date of such agreement and the sale.
Pepin v. *Dunham et al.*, 88

2 The sheriff is responsible for the loss which occurs through his fault or negligence, in enforcing the process of the court; but he is re-

SHERIFF, *Continued.*

lieved of that responsibility, if the parties by agreement or orders, assume control and direction of the property seized. *Ib.*

3 A sheriff's return, in the following words, "And after making diligent search and inquiry, and demand of said defendant for other property to satisfy said writ, and the plaintiff named in the said writ failing to point out other property to satisfy the same, and said writ having expired by limitation of law, is hereby returned credited as above," is insufficient to base a judgment upon against the defendant's security in an appeal bond. *Shephard* v. *Stewart*, 191

4 The sheriff's return should have declared, that he found no property to seize, notwithstanding the demand on the parties. *Ib.*

5 The sheriff is bound to pay over to the judgment creditor the money collected on a writ of *fieri facias*. He has the right to retain out of the amount the fees and charges allowed by law.

Silliven v. *Bellocq, Noblom & Co.*, 305

SUBROGATION:

1 A judgment debtor is not bound by the subrogation of plaintiff's claim in favor of a third party, after judgment has been rendered, unless he has had special notice of such subrogation.

Drumm v. *Sherman*, 96

2 A security, by paying the debts of his principal, becomes subrogated to all the rights which the creditor has against the property of the debtor, for whom he stands as surety.

Davidson v. *Carroll, Hoy & Co.*, 199

SEE MORTGAGES—*Ventress* v. *His Creditors*, 359

SUCCESSIONS:

1 The appointment of an administrator is not necessary where there are no debts against the succession. *Succession of Sutton*, 150

2 Where a party claims the administration of an estate, on the ground that he is a creditor, it is incumbent on him to show by evidence that the debts which he claims are just and valid. *Ib.*

3 Thomas R. Sutton died, leaving a widow with one minor child, issue of the marriage, and one minor child issue of a former marriage. Zenas Preston, the maternal grandfather of the minor of the first marriage, applied for the administration of the estate, alleging that he was a creditor of said minor. The surviving widow opposed his appointment, on the ground: 1st, that he was not a creditor; 2d, that there were no debts against the estate; 3d, that she was qualified as the natural tutrix to her minor child, and as such had the right to administer the estate: *Held*—That there being no evidence in the record, showing that Zenas Preston was a creditor of the estate, he could not be appointed administrator, and the Widow Sutton, having qualified as natural tutrix to her minor child, and Zenas Preston having failed to qualify as natural tutor to his grandson, the widow has shown the best right to the administration. *Ib.*

4 Where money has come into the hands of the administrator belonging to the wife and heir of the deceased father, and he applies it to the payment of debts due by the succession, no tacit mortgage exists on the property of the succession in favor of the wife or the heir; money coming into the succession in this way constitutes a debt

SUCCESSIONS, *Continued.*

against the same, and must be reimbursed to the parties owning it, in due course of administration, as a debt due by the estate, and not a debt due by the deceased. *Cordill* v. *Succession of McCullough*, 174

5 Where a particular item in a tutor's account and tableau is not sustained by evidence in the record, the judgment homologating the tableau will be annulled, so far as that item is concerned, and the case will be remanded to enable the parties to introduce the proofs. *Succession of Rohlfing*, 376

6 Where a judgment, homologating a tableau made and filed by the administrator, shows that the assets in his hands are insufficient to pay the privileges and mortgages against the estate, payment of the ordinary claims cannot be enforced. *Money* v. *Cosse*, 418

SEE EXECUTORS AND ADMINISTRATORS—*Miller* v. *Rougieux*, 577

" " " *State, ex rel., Champlin*, 580

" TUTORS AND TUTORSHIP— *Shiff* v. *Shiff*, 269

TACIT MORTGAGES—SEE MORTGAGES.

TAXES AND TAX SALES:

1 The act of the Legislature of 1859, No. 82, authorizing the Police Jury of the Parish of Pointe Coupée to levy a tax on all the lands of the parish, for the purpose of constructing levees on the banks of the river is constitutional: it having but one object in view, which is clearly expressed in its title. *Police Jury* v. *Colomb*, 196

2 Where the sheriff sells real estate for the taxes due on it under an order of seizure, he must comply strictly with all the formalities required by law, otherwise the sale will be a nullity. *Pursell* v. *Porter*, 323

3 The judge or justice of the peace, who issues the order of seizure and sale of real estate for taxes due, has the right to appoint a curator *ad hoc* to represent the absent owner, on whom notice of seizure, etc., can be served, which will be binding on the owner. *Ib.*

4 Where the sheriff has sold a lot of ground for taxes, and the record of the proceedings show that he has complied with every requirement of the law, the purchaser is bound to comply with his bid. *Ib*

5 A railroad, passing through a parish, is liable to an assessment of a parish tax on the property of the road located within the parish, unless exempted by a special law. The burden of showing such an exemption is on the railroad company. *Gordon* v. *Police Jury*, 334

6 The law authorizing the imposition of a license tax, on professions, trades, occupations and callings, is constitutional. *Police Jury* v. *Cochran*, 373

7 An ordinance of the Police Jury levying a tax on trades, professions, etc., must be uniform. *Ib.*

8 An ordinance imposing a license on all persons in the Parish keeping a powder-magazine with more than fifty pounds therein, is not uniform, because others, keeping a less quantity, may follow the same occupation without obtaining a license, or paying the taxes. *Ib.*

9 That portion of the capital of the Home Mutual Insurance Company which is invested in bonds and stocks exempt from taxation by statute, is not subject to taxation as the capital of the company. *Home Mut. Ins. Co.* v. *New Orleans*, 447

TAXES AND TAX SALES, *Continued.*

10 Capital composed of property not subject to taxation cannot be taxed by calling it nominal capital. *Ib.*

11 The principle of uniformity and equality in taxation, required by the Constitution of Louisiana, would be violated by assessing the nominal capital of a company or corporation liable to be taxed on the amount of capital paid in or to be paid in. *Ib.*

12 Where a party or a company have been compelled to pay an illegal tax to the city of New Orleans founded on an assessment on property or capital stock exempt by law from taxation, he or they may recover the amount thus paid by suit against the city. *Ib.*

13 The city of New Orleans may be restrained by an injunction, from proceeding by order of seizure and sale, to enforce the payment of an illegal tax. See the case of Home Mutual Insurance Co. v. City of New Orleans, No. 889, (ante page 447.)
Home Mut. In. Co. v. *New Orleans*, 450

14 A surviving widow, owning one half of the property of her deceased husband in community, and having a usufructuary right over the other half, under the statute of 1844, is bound personally for the taxes on the property, and she may be sued for the same before any court of competent jurisdiction. *New Orleans* v. *Wire*, 500

SEE EXPROPRIATION—*New Orleans Praying for Opening of Streets*, 497

" LAWS—*State* v. *Volkman*, 585

TOWBOATS:

1 Proprietors of steam towboats plying between the port of New Orleans and the Gulf of Mexico are *common carriers*, and responsible as such.
Clapp et al. v. *Stanton & Co.*, 495

2 A master or owner of a towboat, undertaking to tow any vessel from New Orleans into the Gulf of Mexico is authorized, and required to use every means necessary to tow the vessel safely over the bar, and he is responsible in damages if accident or loss of the vessel occurs through his fault or by his neglect to procure the necessary force and means to secure the safe towage of the vessel. *Ib.*

TRANSACTION:

1 Where several parties, having interest in an estate, enter into a transaction, the object of which is to end litigation, and settle all matters in dispute, none of the parties are bound in warranty to the others, on account of the interest in real property therein conveyed. In such cases, the transfer of whatever rights any of the parties may have made to the others, is in the nature of a quit-claim, and no warranty results therefrom. *Davis* v. *Lee*, 248

2 A transaction has, between the parties to it, the force and authority of the thing adjudged. C. C. 3045. *Ib.*

TUTORS AND TUTORSHIP:

1 A natural tutor, though not required to be confirmed or appointed by the Judge, must, like all other tutors, take an oath before he can act as such. C. C. 328. *Stilley* v. *Stilley*, 53

2 The rule is well settled, that a tutor can do no act affecting the rights or property of his ward, unless authorized by law, and in the manner pointed out. *Shiff* v. *Shiff*, 269

TUTORS AND TUTORSHIP, *Continued.*

3 The law does not authorize the tutor to bind his pupil as surety, and all obligations of that character made by the tutor are null and void. *Ib.*

4 The contract of suretyship, made by the surviving widow in the name of the succession of her late husband, which she administers in her capacity of natural tutrix to her minor child, is null and void. *Ib.*

USUFRUCT—See Community—*Moore* v. *Moore*, 159

VENDOR'S LIEN—See Privileges.

WALLS IN COMMON:

1 Where a party, owning a lot of ground, erects a building or wall thereon at his own expense, the title thereto is absolute in him; but the adjoining owner may make it a wall in common by paying one-half of the cost of construction. *Costa* v. *Whitehead et al.*, 341

2 Where the adjoining proprietor makes use of the wall erected by the other, as a support for a wall or building afterwards erected by him, the party first building may recover one-half of the cost of constructing the wall thus used in common. *Ib.*

3 Where the owner of a lot of ground erects a wall along the line, and the adjoining proprietor afterwards erects a building or wall which is attached to, and rests on the wall first built, the party first building the wall, which has thus become a wall in common, may recover from the other one-half of the cost of erecting the wall in common. *Auch* v. *Labouisse et al.*, 593

4 Where it is shown that the wall in common was in existence at the date of the lease, and the lessor is sued for one-half of the cost of erecting the wall, he cannot call the lessee in warranty. *Ib.*

WARRANTY:

1 In a redhibitory action in which it was proved that a slave purchased by the plaintiff on the 15th of December, 1859, was, at the time of the sale afflicted with "chronic pleurisy," of which he died on the 24th of July, 1860: *Held*—That plaintiff was entitled to recover back the price of the slave from his vendor. *McAllister* v. *Freeman Burton & Co.*, 205

See Transaction—*Davis* v. *Lee*, 248

WILLS:

1 Where the testator bequeathed to his wife ten thousand dollars, and subjoined to the bequest a desire that she should use the same for the benefit of her brothers and sisters, (designated by name) according to her best judgment and discretion: *Held*—That this was an absolute bequest in favor of the wife, and that she had the absolute disposal of the money bequeathed. *Succession of Yancey*, 162

2 The desire of the testator is simply addressed to the conscience of the devisee. *Ib.*

3 A nuncupative will, by public act, must be dictated by the testator, and written down by the notary, as dictated in the presence and hearing of the witnesses; it must show on its face that all the formalities prescribed by law have been strictly complied with, otherwise it will be declared null and void. *Devall* v. *Palms*, 202

4 A nuncupative will, by public act, being null in that form for want of

WILLS, *Continued.*

the formalities prescribed by law, may be admitted to probate as a nuncupative will under private signature. *Ib.*

WITNESSES:

1 The objection that a witness was an accomplice goes to his credibility, but does not affect his competency. *State* v. *Cook*, 145

2 An accomplice is a competent witness, but his testimony requires some confirmation, *aliunde*. *Ib.*

3 A witness in a criminal trial is not bound to criminate himself; but this is a right which he may waive if he chooses. *Ib.*

4 The husband cannot be a witness for or against the wife, nor can the wife be a witness for or against the husband. *Carter* v. *Taylor*, 421

5 The policy of the law is to exclude the testimony of one of the spouses for or against the other in any shape. *Ib.*

6 Where the husband and wife are sued *in solido*, the husband cannot be required to answer under oath interrogatories on facts and articles propounded by plaintiffs. *Ib.*

SEE EVIDENCE—*Field* v. *Harrison et al.*, 411

" " *Finley et al.*, v. *Bogan et al.*, 443

" " *Golding* v. *Steamer America et al.*, 445